
CANADA / JUDGMENT

L.J.C. v. G.S.C.

2010 BCSC 1379

COURT

Supreme Court of British Columbia

DECIDED

19 July 2010

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2010 BCSC 1379 L.J.C. v. G.S.C.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

L.J.C. v. G.S.C.,

2010 BCSC 1379

Date: 20100719

Docket: 30569

Registry: Penticton

Between:

L.J.C. also known as L.J.W.

Plaintiff

And

G.S.C.

Defendant

Before: The Honourable Mr. Justice Barrow

Oral Reasons for Judgment

Counsel for the Plaintiff:

C.D. Goodrich

Appearing on his own behalf:

G.S.C.

Place and Date of Trial:

Kelowna, B.C.

November 3, 4, 5 and 10, 2009

Place and Date of Judgment:

Penticton, B.C.

July 19, 2010

- [1] THE COURT: This family law dispute relates to how the family assets and debts of the parties should be divided. Before setting out the issues, some general background is necessary.

Background

- [2] The parties met through an Internet dating service in January 2004. They began living together in July 2004 when Ms. C, who now goes by her maiden name of Ms. W, moved into Mr. C's home. The parties separated initially in January 2006, but reconciled in March of that year. They married in July 2007 and separated for the final time on May 23, 2008. There are no natural children of this marriage, although Mr. C and Ms. W have children from earlier relationships. Ms. W is 40 years old. She has three daughters from previous relationships: S, who I gather is now an adult, D who was born on August 29, 1992, and is now 17; and E (E1), who was born July 31, 1997, and is now just short of her 13th birthday. Both of the two youngest children are and have been Ms. W's care since these parties first met. Mr. C has one child, a daughter also named E (E2), who was born October 17, 2001. She is and always has been in her mother's care. Mr. C has regular access to her.
- [3] Ms. W works for the Canada Revenue Agency in Penticton as a GST collections officer. She earns \$44,900 a year. When she and Mr. C met, she was working for a soft drink company in Kelowna. She left that job in April 2005 and worked briefly for a real estate company before joining the CRA in October 2006.
- [4] Mr. C is a carpenter. When he and Ms. W first began living together, he was pursuing that vocation in a partnership. He started that partnership in late 2002. In September 2006 he and his partner parted ways, and, after a brief attempt at oil rig work, Mr. C began AWL Woodworking, a sole proprietorship. Through AWL Woodworking, Mr. C did commercial and residential woodwork. He and his partner had built a shop in what was a carport attached to what was to become the matrimonial home. Mr. C continues to use that shop today. In the fall of 2007, Mr. C secured a contract renovating a Denny's Restaurant. That was his biggest customer, and he has done work for that chain in the years since.
- [5] In January 2009, Mr. C's mother incorporated Deep Dado Cabinets Ltd. She is the sole officer, director, and shareholder of that company. Mr. C works for that company and is paid a salary. It is conceded, however, that he is the effective operating mind of the company. He caused the company to be incorporated for several reasons. First, he wanted to continue his

business without risking sharing any post-separation growth with Ms. W; second, he wanted the advantage of a limited liability company; and finally, because his mother would be exercising some control over the finances it was hoped she would bring some discipline to Mr. C in that regard. Although the company was incorporated, no assets from AWL Woodworking were formally transferred to it.

- [6] When Mr. C and Ms. W began their relationship, they each owned a house and they each had significant debts. Ms. W owned a house in Kelowna. When she moved in with Mr. C, she rented that house. The rental income may have exceeded her mortgage and strata payments by about \$100 a month. The house was rented out until it was sold in May 2006. She received \$66,087 after paying off the two mortgages and the other usual adjustments. When Ms. W and Mr. C first set up house, Ms. W had several debts in addition to the mortgages on her home. The most significant debt was owed to her parents and was outstanding in the approximate amount of \$67,000. This loan was used by Ms. W in part as a down payment on the purchase of her Kelowna home. It was not secured by a mortgage on the home, but Ms. W and her parents regarded it as tantamount to a mortgage and they both understood it was to be paid off when the house sold.
- [7] Ms. W only paid \$5,000 to her parents when her home sold. The remaining funds were spent, according to Ms. W, as follows: \$19,565 on renovation materials for the parties' home; \$14,612 on debts that Ms. W maintains were the responsibility of Mr. C; \$4,000 to pay off a debt that Ms. W and her oldest daughter owed in relation to the purchase of computers; \$3,200 for E1's school; \$3,200 on Ms. W's personal bank loan; \$2,800 on a debt that Ms. W owed to Mr. C; \$2,000 for laser eye surgery for Ms. W; \$1,000 that she owed her boss, money she had to borrow from him to pay back the damage deposit her tenants had given her; \$2,200 for "extra" things like groceries, haircuts, summer day camp and clothes; and \$2,721 for tools for Mr. C. In addition, she paid \$2,750 for some indoor/outdoor furniture. All of this amounted to about \$58,000. I take these amounts from an email that Ms. W sent to her parents in August 2006.
- [8] I accept that the payments were made as she described, except for the "extra stuff" for Graeme and parts of the amounts she assigned to his debts and purchases. There is no dispute, however, that her parents were not repaid from the proceeds of sale of her home.
- [9] Before dealing further with the background, it is convenient to address the issue of credibility. There are some significant conflicts in the evidence given by the parties. For the most part, where their evidence conflicts, I accept the account of Mr. C over that of Ms. W. I reach that conclusion for three main reasons. The first relates to Ms. W's handling of the sale of her home and her failure to pay back her parents from the sale proceeds. Ms. W knew that she was to repay her parents, but she did not do that. In addition, she did not tell her parents that she had sold the house for at least three months after it was sold. It was only in late August that she emailed them and told them what she had done. She wrote in part:

My conscience is eating me alive so I've decided that I need to come clear with you both over something I've done. I sold the house and I did not keep enough to pay out my mortgage with you. I feel extremely bad and guilty for having lied to you and for not giving you anywhere near enough money; and again, Graeme and I did this. It isn't just me and it wasn't just him.

- [10] Although Ms. W attempts to spread the blame, and thus involve Mr. C in this deception, whatever his involvement it was significantly less than hers. First, it was her debt and her obligation to retire it. Mr. C was not a party to that arrangement. Second, Ms. W sold the house during the parties' separation. Mr. C told her that she had to sell the house if they were to get back together and they had to use the money to bring some sanity to their finances.
- [11] I accept that Mr. C set that as a condition of their reconciliation. I do not accept that at the same time he agreed to various large discretionary expenses, for example laser eye surgery, indoor/outdoor furniture, significant school fees, in addition to the "extra stuff".
- [12] In her evidence at trial, Ms. W said that she and Mr. C agreed to pay debts, but not her parents. She said that they had agreed that they would tell her parents right away. She did not even do that. She was asked if she lied to her parents between the date of the sale and when she eventually confessed in the late August email. Rather than simply acknowledge that inescapable conclusion, she testified that she "may have withheld information from them".
- [13] The second reason I cannot place much stock on Ms. W's evidence relates to a hearing that took place before Mr. Justice Rogers in November 2008. Ms. W was seeking interim child and spousal support from Mr. C. One of the children for whom she sought support was her daughter D, who was then 16 years old. Ms. W appeared on her own behalf at that hearing. Mr. Justice Rogers set out the troublesome aspect of the matter at paragraphs 6 through 10 of his decision, which can be found at 2008 BCSC 1672. He wrote:
- [6] According to Ms. W's Affidavit #2 at paragraph 9, she used to receive \$310 per month from Mr. K for D's support. She says that these payments stopped for four months in the spring of 2008 when D went to live with her biological father in Alberta. She deposed that because she paid no support to Mr. K during those four months, she forewent support for four months after D returned to her care in the summer of 2008.
- [7] Ms. W made submissions during argument to the effect that because Mr. K lives in Alberta, she does not know the legal procedure to extract child support for D from him. She also asserted that Mr. K was disputing his obligation to pay support for D. Ms. W stated that she had not taken any concrete steps such as making an application for child support for D. The general tenor of Ms. W's submissions was that getting support from Mr. K was a difficult and uncertain thing.

- [8] Coincidentally, immediately after concluding the hearing of Ms. W's application, a desk order was presented for signing and entry. The order was in the matter of [W] v. [K]...The plaintiff in that matter had the same name as Ms. W in this proceeding. The order related to child support to be paid by...K for...D. The inescapable inference to be drawn is that this order relates to Ms. W, [and] her daughter D, and D's biological father. The desk order varied the child support provisions of an order of this court made in February 2002. The variation stipulated that Mr. K has a Guideline income of \$84,424 and that on December 1, 2008, he would commence paying child support of \$751. The desk order also stipulated that Mr. K owed \$12,000 in retroactive child support, which he would pay at the rate of \$500 per month commencing November 1, 2008.
- [9] The desk order was approved and signed by Ms. W and by Mr. K's counsel.
- [10] Ms. W did not advise the court of the fact that she had come to an agreement with Mr. K ahead of the hearing, nor did she advise the court that she had approved of an order embodying the agreement and that the order had been submitted for filing. This demonstrates a disappointing lack of candour by Ms. W.
- [14] At this trial, Ms. W was asked about the earlier hearing. She said that before the November 24, 2008 hearing she had been dealing with D's father's lawyer. D's father had retained counsel in Summerland. That lawyer had prepared a consent order for Ms. W's signature. She had signed it by the time of the hearing before Mr. Justice Rogers, but had not received an entered copy of it back, or, for that matter, a signed copy. She explained that because she had not received it, she "did not mention it". She said also that if she had a lawyer, she would have done things differently.
- [15] I note in addition that Ms. W deposed, at paragraph 14 of her October 22, 2008, affidavit, as follows:
- I currently receive no child support from D's father and do not anticipate to receive any in the near future as he is disputing his legal responsibilities, has left the province, and I again, unable to afford legal counsel, must pursue him on my own.
- [16] While that might have been true when she swore it, it was not true on November 24, 2008, and she allowed that false impression to continue. It was only by chance that the true state of affairs was discovered. The November 24, 2008, hearing represents a serious act of dishonesty. Ms. W's response to it in this proceeding is itself troubling. Her explanation does not convince me, nor does the suggestion that comes to the proposition that if she had had a lawyer she may have acted honestly. It is a serious mark against her credibility, one that standing alone would cause me to doubt her veracity.
- [17] It does not stand alone, however. It stands with her behaviour regarding her parents' debt and the sale of the house and her other evidence in this case. Two examples of the latter will illustrate. Mr. C asked Ms. W if they discussed her debts and the interest she was paying on them, and whether she should sell her house to address those debts. Ms. W said she could

not recall. Although Mr. C was careless about debt, I have no doubt that he always tried to minimize his interest. It was a constant refrain throughout their relationship. I do not accept that Ms. W simply did not recall whether he raised that matter when discussing the proposed sale of her house. Second, near the final separation, Ms. W had a conversation with "Jim", one of their neighbours, about transplanting some shrubs from the matrimonial home to his home so that they could later be made available to her when she settled into a new home. She initially denied that such a conversation ever took place and only eventually allowed that she and Jim may have joked about such a plan.

- [18] Returning to the narrative background, Mr. C owned what became the matrimonial home when he met Ms. W. It is on Charles Avenue in Summerland. He purchased it for \$145,000 in the summer of 2002. His parents lent him a down payment of \$36,250 and title was taken in three names: his, his mother's, and his father's. The balance of the purchase price was financed through a mortgage with CIBC. The home itself needed renovations and Mr. C wanted to close in the carport and use it for a shop for his business. He borrowed an extra \$21,000 from his parents to do that. As of November 2003, Mr. C owed his parents \$73,380. By July 1, 2004, that is at the outset of this common-law relationship, that debt had grown to \$111,146. There are contemporaneous documents prepared by his parents and signed by all of the parties evidencing this debt. It is a debt, it is not any kind of ruse, and the details of the specific advances that go into its makeup are also set out in the supporting documents.
- [19] During their relationship, the parties reached a number of reasonably complicated arrangements regarding their finances. Initially, they kept their money separate. Mr. C paid half of the mortgage and two-fifths of the utilities and they shared the taxes. The division of the utilities was to reflect the fact that Ms. W and her two children were living in the home while Mr. C was in the home and his daughter was there on an intermittent basis when he exercised access. They maintained separate accounts otherwise and both at least attempted to service their own debt.
- [20] The one thing the parties never seemed to grasp in the course of their considerable efforts at financial planning is the basic proposition that they needed to spend less money than they were earning if they hoped to avoid going further into debt. Rather than do that, they continued to spend freely and from time to time refinanced their various debts, which usually had the effect of reducing their monthly payments, but always had the effect of increasing their overall debt. It was this relentless financial pressure that gave rise to their separation in early 2006. When they reconciled, they did so with a fresh financial plan and renewed resolve to address their debt. Sadly, the first thing that happened was the sale of Ms. W's home, the payment of some debts but the expenditure of more money, with the result that her parents remained unpaid and they remained burdened with an increased monthly payments to them in an effort to service that debt.
- [21] One further financial matter warrants mention. In February 2008, an acquaintance of the couple suggested they consider what is known as a Manulife leveraged investment. Manulife would lend them \$100,000 provided they invested it in Manulife approved investments, in

this case a segregated mutual fund. If they borrowed the money and made the investment in that fashion they would only be responsible for paying interest on the loan, and that could carry on indefinitely. The incentive to invest was to participate in what was then a rising market. Mr. C decided to take this gamble. By June 30, 2008, a month after the separation, the investment was worth \$104,000. By the end of the year, however, it was only worth \$73,335. It has since recovered somewhat.

- [22] This action was begun by Ms. W on June 4, 2008. On June 12, she obtained a without notice order restraining her and Mr. C from disposing of any family assets, including specifically AWL Woodworking. By a separate order pronounced the same day, she was granted exclusive occupancy of the Charles Avenue home and Mr. C was prohibited from contacting her. On July 3, 2008, this time on notice to Mr. C, Master Young ordered that Mr. C could use his shop and ordered that he could have exclusive occupancy of the home effective August 1, 2008. Mr. C has lived in the home since. Master Young also ordered that Mr. C pay to Ms. W \$2,500, which he did. That sum was to be accounted for on the division of assets. Finally, Ms. C sought interim spousal and child support, and that gave rise to the hearing I earlier referred in November 2008. Her application was dismissed with costs. On December 30, 2008, the master made a number of further orders intended to assist in the valuation and division of the personal property of these parties. Finally, on June 18, 2008, there was an order made regarding AWL Woodworking and its accounts, and specifically the various withdrawals that Mr. C had made from that enterprise's accounts.

The Positions of the Parties

- [23] The assets at issue are the following: the former matrimonial home, the chattels, the assets of AWL Woodworking, consisting primarily of tools, the Manulife investment and the associated loan, two motor vehicles, Ms. W's pension with CRA, and Mr. C's life insurance policy. There are, more significantly, several debts.
- [24] As of July 13, 2009, Mr. C had the following debts, all of which were outstanding at the date of separation, although perhaps not in precisely the same amount. He owed, on a Manulife line of credit, \$224,250. He owed, on an American Express line of credit, \$8,839. He had an Amex Costco card, on which there was owing \$2,088. He had an American Express Gold Card, on which he owed \$12,000. He had a loan for his truck outstanding at just under \$28,000. He had a Citi MasterCard on which he owed just over \$8,000, a CIBC Visa on which he owed just over \$14,000, and his Manulife investment loan of \$100,000. He had a Summerland Credit Union MasterCard on which he owed just over \$14,000, and he owed M.C. \$107,500. The loan to M.C. is the successor loan that Mr. C owed to both of his parents. They have separated in the interim and M.C. kept her son's debt as part of her settlement with Mr. C's father.

- [25] Ms. W's debts, again according to her July 2009 Form 89, included the following: a debt to GMAC in relation to her automobile outstanding in the sum of \$1,600, a Citi Financial loan outstanding at \$10,600, a Wells Fargo loan outstanding at \$5,200, two MasterCard debts totalling \$4,000, an orthodontic debt totalling \$4,500, and debts to her parents amounting to \$67,000. She also owns \$175 in Canada Savings Bonds.
- [26] The matrimonial home was being renovated when the parties separated, a project that had been underway since they set up house. They had purchased a quantity of materials and Mr. C was doing the work on the renovations as time permitted. He downed tools on the project when the parties separated and has not done any work since. As a result, many of the materials purchased remain unused and sitting at the home uninstalled. The exterior of the home now consists of Rona-wrapped framing.
- [27] Mr. C argues that whatever the value of the home, and the parties disagree on the value, it should be reapportioned in his favour, given the short marriage and the fact that he owned it prior to the relationship. He also argues that if he is to retain a substantial portion of the debts, that a reapportionment is justified.
- [28] Ms. W's position is that she contributed to the home, both in terms of paying a percentage of the monthly payments and also by paying for a significant portion of the renovation materials. She paid for part of those materials from the proceeds of sale of her home. She argues that a significant portion of the debt that has accumulated, and is now represented by the Manulife line of credit, was taken out by and used for Mr. C's own purposes and should not be accounted for in the division of family assets. As for the Manulife investment, she argues that Mr. C decided to enter that venture and he should be exclusively responsible for it.

Analysis

- [29] I will begin with that which is not seriously in dispute and those matters that can be resolved summarily. First, I am satisfied the evidence supports the granting of a divorce. There will be an order in the usual terms.
- [30] Second, although Ms. W sought spousal and child support in her statement of claim, she abandoned those claims during the course of this proceeding, and they are therefore dismissed.
- [31] There will be an order granting Ms. W sole custody of E1 and D and no order for access.
- [32] I note that the court must be satisfied that reasonable arrangements exist for the support of any children of the marriage. Here, both children are being supported by their mother and their respective biological fathers. Given the overall financial circumstances, the length of this marriage, the age of the children at the outset of it and their age now, and Mr. C's financial obligation to his own natural daughter, I am satisfied that no order for support is a reasonable arrangement in this case; and hence, the issue does not bar the granting of a

divorce.

- [33] Finally, there will be an order that Ms. W's name is to be changed from L.J.C. to L.J.W.
- [34] Next, Mr. C has a 2004 F-350 truck, which he uses both for his woodworking business and for personal transportation. He owes money for its purchase. Exactly what he owes is difficult to determine. In his June 2008 financial statement he said it was \$19,000. In his November 2008 statement he said it was \$33,000. In his July 2009 statement he said it was \$27,987. The value that he places on the truck is also difficult to determine. In June 2008 he said it was \$20,000. In November 2008 he said it was \$25,000. In July 2009, he said it was \$23,795.
- [35] I note this for two reasons. First it is clear that, within reason, whatever the value of the truck and the value of the loan, there is no equity in the vehicle. Second, it highlights the parties' rather chaotic, or at least disorganized approach to financial issues, a trait that was apparent both during their relationship and since they separated. Ms. W has a Saturn vehicle that she values at \$1,400, against which there is a loan of just under \$1,700. There is no equity in that vehicle, either.
- [36] Each party will keep their respective motor vehicles and the debts associated with them. It is not clear that either party is liable for the debt associated with the other's motor vehicle, but if they are, at least as between these parties, each is to indemnify the other in the event the creditor pursues the other for payment on these loans.
- [37] Ms. W has an interest in a pension through her employment with the Canada Revenue Agency. She joined the plan March 30, 2007. Her interest as of the date of separation, some 14 months later, was nominal. Mr. C has a life insurance policy with a modest cash surrender value. Although the evidence as to the value of these assets is imprecise, I am satisfied that they have similar value. Mr. C is entitled to retain his life insurance policy. Ms. W will keep her pension.
- [38] Next, there is the Manulife leveraged investment and the associated debt. Although initially Ms. W sought an interest in this investment, that is when it was worth more than the debt, she is now not interested in a percentage of it, and, in any event, Mr. C is now prepared to keep that investment and the associated debt. He also concedes that Ms. W can keep her Canada Savings Bond. There will be orders to that effect.
- [39] The contentious issues relate to the matrimonial home, the chattels, and the various debts. The presumptive rule is that family assets are divided equally. Although family debt is not addressed in the Family Relations Act, it is common to deal with debts that are associated with the acquisition or preservation of specific assets by deducting the value of the debt from the value of the assets, and thus arriving at a notional equity, or ordering disposition of the assets and payment of the debts from the proceeds.
- [40] In this case, Mr. C argues that the equity in the family home should be reapportioned in his favour because he owned it at the outset of the marriage. The equity, regardless of how it is divided, must take account of the mortgage and at least a portion of the debt due to his

mother. Ms. W argues that she should receive half the equity and that no account should be taken of a portion of the mortgage or the line of credit, and no account should be taken of the debt due to Mr. C's parents. This is because, she argues, there was a CIBC mortgage on the property at the start of their relationship, and if the parties had simply stuck to their plan of paying down that mortgage they would now have significant equity in the home. It is half of that notional equity that Ms. W seeks. The division of the family home is further complicated by the difficulty in assessing its value given the state of the renovations and the cost of the materials purchased, but not yet installed.

- [41] I will deal first with the issues relating to the loans associated with the matrimonial home.
- [42] Mr. C's loan from his parents has fluctuated over time. He borrowed from them for the down payment and to convert the carport and to pay for his legal fees in relation to the acquisition of the home. Those three items came to \$58,000. As earlier noted, as of July 2004 the loan to his parents was outstanding in an amount just over \$111,000. The difference, that is to say \$53,896, was the result of "incidental expenses" and some specific expenses, for example insurance on his truck and a down payment for his truck.
- [43] The mortgage on the matrimonial home was initially with CIBC. It was outstanding at approximately \$100,000 when the parties began their relationship. It was paid down by approximately \$3,000 by May of 2005, when Mr. C refinanced. He refinanced first with First National, borrowing \$152,600. This additional \$55,000 was disbursed as follows. He paid \$10,000 on his debt to his parents, and the balance, according to Mr. C, was used for renovation materials and payments on or payouts of various credit card debts that the parties had. He has receipts for about \$14,000 in renovation materials. I accept, however, his evidence as to the use of the balance of these funds.
- [44] In March 2007 Mr. C refinanced again, this time with the Summerland District Credit Union. He paid out the First National mortgage, which was outstanding at \$146,738, inclusive of a penalty, by getting a mortgage of an equal amount. He also got a \$69,000 line of credit which was secured by the house. A month later he refinanced again, and at that point the line of credit had been drawn down in the amount of \$37,000. Again, there is a dispute about how this money was spent. I accept that it was spent either on renovation materials or financing the parties' individual credit cards and/or their living expenses.
- [45] The next refinancing occurred in April 2007, and it was done through Manulife in conjunction with the leveraged investment I earlier alluded to. With what is known as a "Manulife One" account, Mr. C had access to up to \$224,000 in credit, again secured by the matrimonial home. When that arrangement was entered into, the mortgage at Summerland Savings Credit Union and the line of credit at that institution were paid out, for the combined sum of \$186,000. Two-and-a-half months later, that is in June of 2007, the Manulife One account stood at a negative balance of \$220,000. As of the date of separation, it was just slightly more than that. Thus, within two-and-a-half months, about \$37,000 had been drawn down on this account. It is this amount, in conjunction with the amounts earlier

referred to in the first, second, and third refinancing, that Ms. W questions. I accept, however, that these funds were used either for renovations, the parties' wedding, and/or payments of and payouts on credit cards, together with living expenses, which, throughout this entire time, exceeded the parties' incomes.

- [46] To return to the issue of the house-related debt, I am satisfied that the Manulife One account at \$220,500, rounded, and \$48,000 due to Ms. C, which I calculate at \$58,000, being the portion of the loan initially borrowed in connection with the house less \$10,000 which was repaid on the First National refinancing, are properly associated with the home. In total, the debts that are properly to be accounted for in the division of the home come to \$268,500.
- [47] The next issue is the value of the home. The first appraisal of it was obtained by Ms. W in June 2008. It was done by Mr. Stasuik. He assessed it on a "as-is" basis at \$383,000. The second appraisal was also done by Mr. Stasuik, and it was dated June 23, 2009. He assessed it on an "as-is" basis, as of that date, at \$268,000, and at \$330,000 if the renovations were completed. The other relevant information concerning the value of the home is its 2006 tax assessment of \$214,600 and the 2005 tax assessment of \$190,000.
- [48] As earlier noted, there is a quantity of renovation materials at the home uninstalled, or as yet unused.
- [49] In terms of the "as-is" value of the June 2009 assessment and the debts that I have outlined associated with the home, the result is that there is no equity in the home. The problem is that there is potential value in it, likely even if limited effort is devoted to the completion of the renovation materials. The renovation materials, independent of the plan for this home, have little or a much reduced value.
- [50] The appraisal evidence is itself difficult to reconcile. I can understand a change in the market value, but there was change in the renovation cost from \$10,000 to \$25,000 between the two appraisals. I accept the \$25,000 value and attribute the change to the fact that Mr. C may not have been consulted when the first appraisal was commissioned by Ms. W, but he was consulted when the second appraisal was ordered by the court. If the house has a value of \$330,000 and the cost of completing the renovations is \$25,000, its notional value, for purposes of this exercise, can be taken at \$305,000. If the debt of \$268,000 is offset against that price, there is equity of \$37,000.
- [51] The next issue is whether there should be an equal or unequal division of this value. I think an equal division is fair, or at least not unfair. First, there was little equity in the home at the outset, once account is taken of the debts associated with it. Second, Ms. W did contribute to the acquisition of the renovation materials, or some of them, and she contributed otherwise towards the operation of the home and the maintenance of the family. Finally, none of the other factors in s. 65 weigh particularly heavily in one direction or the other.

- [52] Mr. C will have the option of purchasing Ms. W's interest in the home for the notional sum of \$18,500. Ms. W has already received \$2,500 as a result of the advance that was earlier ordered. Assuming that money came from a fund that was a family asset, half of that money was already Ms. W's. Therefore, Mr. C is entitled to \$1,250, and in effect that amount will be credited to that which he owes to Ms. W.
- [53] Further, the parties kept meticulous accounts of small debts as between themselves. While they do not agree on much, they do agree that Ms. W owes Mr. C about \$6,121 for that running debt calculation. With interest, that debt is at \$7,500.
- [54] Next, there are other debts of the parties and Mr. C's tools and his interest in AWL Woodworking. He valued the latter at \$25,000 in his July 2009 financial statement. The accounting for AWL Woodworking is, if anything, more convoluted than the accounting the parties attempted to use in keeping track of their personal finances. Mr. C would sometimes pay business expenses with personal credit cards or a personal line of credit. Sometimes he would pay his business expenses on credit cards he took out specifically for that purpose. He would often pay himself without regard to whether he had earned enough money to do so. As a result, from time to time, he would not have enough money to cover all of his expenses, and that would result in him borrowing money from his parents. He used his parents as, in effect, another line of credit or a revolving credit, except that it only revolved in one direction, up. The debt to his mother, as of the date of separation, exclusive of the house and the renovation costs, is about \$60,000. That debt, or a significant portion of it, predated the parties' relationship.
- [55] Mr. C is entitled to his tools and the equipment of AWL Woodworking. He is responsible for the entirety of the debt owed to his parents.
- [56] He has about \$75,250 in other credit card or near credit card debt. Ms. W has about \$19,000 in similar debt, in addition to the \$67,000 she owes her parents. I take Mr. C's debts number from his July 2009 Form 89. Two of the debts, the Amex Gold Card debt at \$11,870 and the MasterCard debt through the Summerland Credit Union at \$14,000, are business debts. They are Mr. C's sole responsibility. His Citi MasterCard, outstanding at \$8,137, is Mr. C's personal MasterCard and his exclusive responsibility. Therefore, of the \$75,250 in credit card debt, \$34,000 is Mr. C's alone. Of the \$41,000 remaining, Ms. W must contribute \$7,500 to account for the inter-party loan that they kept track of and to which I earlier made reference.
- [57] There remains, therefore, \$33,500 in credit card debt to be factored into the division. Of that debt, \$2,000 is owed to Costco on a MasterCard issued by that company. A significant portion of the amount of that debt was for the parties' honeymoon, and Ms. W is responsible for half of that debt. I am satisfied that a portion of the remaining debt is properly attributable to either Mr. C's personal expenses or his business, or some combination of both.
- [58] Turning to Ms. W's debts, she owes Citi Financial \$5,200 and \$2,500 to MasterCard, in addition to her parents' debt. She has, therefore, about \$7,700 in consumer debt.

- [59] There is no way to precisely sort out this debt between that which is owed by the business, that which is owed by one party or the other, and that which is owed by them jointly. As I have noted, it is clear that Ms. W should pay half of the American Express Costco debt.
- [60] What I propose to do is this. The outstanding debt to which both parties are to contribute, ignoring for the moment the Costco debt, is \$39,000. That is the debt that is in Mr. C's name, plus Ms. W has \$7,500 in debt less the inter-party "loan". Half of that is \$19,500. Each party is notionally responsible for that amount. I am satisfied that a portion of this debt is properly the business or Mr. C's own debt. I will therefore discount Ms. W's contribution to \$10,000.
- [61] There remains the division of personal property and the other debt. As to personal property, like other aspects of this case, the parties have made the exercise rather complicated. In addition, they agree on virtually none of the values they attribute to the items that each of them has retained. Ms. W says that Mr. C has \$33,200 in personal property. This is after taking off the value of his pickup truck, the value of some tools, and the value of a trailer. Those are properly taken into account in the AWL Woodworking assets. Mr. C values the property he has at \$6,740. As to the property in Ms. W's possession, she says it is worth \$6,370. Mr. C says it is worth \$13,000.
- [62] I will average both values and assign to the property that Ms. W has the value of \$9,867. Mr. C's property will be valued at \$20,000. Therefore, notionally, Mr. C owes Ms. C \$5,000 to equalize the division of personal property.
- [63] To summarize, Ms. C owes Mr. C \$1,000 for the honeymoon expense. Mr. C owes Ms. W \$16,250 for her interest in the house. Mr. C owes Ms. W \$5,000 to equalize the division of chattels. Ms. W owes Mr. C for the disproportionate debts he has assumed, even after discounting those debts to allow for some portion of them attributable to his business and his personal expenses, \$10,000. The result is that each party retains the chattels in their possession. Mr. C retains the AWL business assets and the debt in his name and he keeps the house. Ms. W keeps her chattels, her pension, the Canada Savings Bonds, the debts in her name, and she receives, to equalize all of this, the sum of \$10,250.
- [64] If Mr. C wishes to sell the house, rather than pay out Ms. C in accordance with the foregoing, he will have that option. If he does, the mortgage on the home is to be paid out and \$48,000 worth of the debt to his mother is to be paid out. What remains is then to be divided equally after taking account of the adjustments I have noted to account for the personal debts and the division of chattels. I will allow Mr. C some time to make that decision.
- [65] Finally, I will hear from the parties as to the issue of costs. I will not do that today, because it may take some time for the parties to settle their position and they may want to wait for a transcript.

[66] Mr. C, from your perspective I appreciate this is a great deal of information to assimilate at one swoop, but what I have done is allow you an opportunity to either pay out Ms. W or to sell the house and split the proceeds. You may want to wait until the issue of costs is addressed before you make that decision, but I will want that decision to be made relatively quickly, likely by the end of August.

[DISCUSSION]

[67] THE COURT: The transcript will probably take a couple of weeks, maybe three weeks. Let us assume it gets signed off by say the 13th of August, more or less. I will likely have the trial coordinator contact you to set a time during the week of August 23rd, and by that time Mr. C will have decided what he wants to do at the house and I will hear from of you as to what should happen on the question of costs and I will address any questions you have arising out of the reasons, because they are a bit convoluted and you may have some questions even after you read the transcript.

Barrow J.

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