

CANADA / JUDGMENT

Lamoureux v. Hedquist

2023 BCSC 1539

COURT

Supreme Court of British Columbia

DECIDED

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2023 BCSC 1539 Lamoureux v. Hedquist

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Lamoureux v. Hedquist,

2023 BCSC 1539

Date: 20230901

Docket: E136834

Registry: Kelowna

Between:

Leanne Lorraine Lamoureux

Claimant

And

Thomas Donald Hedquist and 0867873 B.C. Ltd.

Respondents

And

Robyn Gibson

Respondent by Counterclaim

Before: The Honourable Justice G.P. Weatherill

Reasons for Judgment

Counsel for the Claimant:

D.L. Polley

Counsel for the Respondents:

L.M. Bosdet

M. Wardman

Appearing on his own behalf:

R. Gibson

Place and Date of Trial/Hearing:

Kelowna, B.C.

April 25-28, 2023

May 29-31, June 1-2, 13-15 2023

Place and Date of Judgment:

Kelowna, B.C.

September 1, 2023

I. INTRODUCTION

- [1] This family law case concerns a five-year spousal relationship between the claimant and the respondent ("Relationship"). The parties met in March 2015, began cohabiting in May 2015, and separated on July 6, 2020 ("Separation").
- [2] The parties have agreed to an equal division in the increase in value during the Relationship of all non-corporate personal property. Both parties entered the Relationship with some property and agree on most exclusions and the valuations of family property.
- [3] The primary dispute is over the division of the respondent's corporate property. The respondent seeks reapportionment of his business interests under s. 95(2) of the Family Law Act, S.B.C. 2011, c. 25 [FLA].
- [4] In addition to seeking one-half of the significant increase in the value of the respondent's corporate assets during the Relationship, the claimant seeks spousal and child support. The respondent has been paying spousal and child support to the claimant pursuant to a court order made by Justice Davies on July 28, 2021 (the "Davies Order"). The claimant also receives child support from the respondent by counterclaim, Mr. Robyn Gibson, the father of the claimant's teenaged daughter, P.G. The respondent added him as a party in order to correctly determine his stepparent support obligations.

II. OVERVIEW OF THE PARTIES AND THE RELATIONSHIP

- [5] I will now introduce the parties, their histories, employments, and assets in brief, before delving more deeply into factual issues relevant to the matters that I must resolve. An agreed statement of facts and chronology of events sets out much of the background including agreements on property, financial discussions during the Relationship, and the parties' incomes.
- [6] The claimant was a flight attendant with Air Canada from 1988 until 1996, following which she has primarily supported herself with long-term disability benefits she was receiving due to anxiety and an eating disorder. She moved from Winnipeg to Penticton in 2004, where she met Mr. Gibson, whom she married in 2008. Their daughter P.G. was born in 2006. After their separation in September 2014, they entered into a co-parenting arrangement whereby they continued to share their family home and their ski cabin at Apex Mountain Resort ("Apex Cabin"), alternating between the two properties.
- [7] The respondent is an entrepreneur who owns and operates several businesses in the Penticton area. He moved from New Brunswick to Nanaimo in the late 1990s, where he married his first wife Martina. He and Martina have two sons: D.H., born in 2003; and B.H., born in 2005. I shall refer to D.H., B.H. and P.G. collectively as the "Children".
- [8] In the early 2000s, the respondent moved his family to Penticton. In 2008, he separated from Martina.
- [9] Of the respondent's businesses in Penticton, the principal and most successful are Trademark Industries and Superior Septic Services. I will describe them in greater detail below, along with his other businesses where relevant.
- [10] The respondent also acquired several properties in the Okanagan prior to meeting the claimant. He purchased homes on Uplands Court, Penticton, in 2012 ("Uplands Ct Home"), and on Robinson Avenue, Naramata, in 2009 ("Robinson Ave Home"). In 2004, he joined two manufactured homes together to create a double-wide, where his mother lived in her retirement ("Manufactured Home").
- [11] When the Relationship began, the parties both had negligible savings and investments, and no non-mortgage debt. The lion's share of their assets comprised real estate and the respondent's businesses.
- [12] The parties met in March 2015. The claimant was 47 years old, living with Mr. Gibson in a home they owned on Lower Bench Road in Penticton ("Lower Bench Rd Home"). The respondent was 39 years old, living in the Uplands Ct Home, which happened to be only a block away from the Lower Bench Rd Home.
- [13] The respondent moved into the Lower Bench Rd Home in May 2015. From May 2015 until February 2019, the Children alternated spending weeks with the parties and with their other parents.

- [14] On approximately August 1, 2015, the respondent proposed marriage and the claimant accepted. The marriage itself never took place.
- [15] The claimant commenced this action on July 6, 2020.
- [16] On May 12, 2021, the parties agreed to a mutual consent order restraining each other from dealing with property ("Restraining Order").

III. THE RESPONDENT'S BUSINESSES

- [17] The respondent has owned, operated or otherwise been involved in a number of businesses in the South Okanagan. I will introduce the relevant businesses here.

A. Trademark Industries Ltd.

- [18] The respondent incorporated Trademark Industries Ltd. ("Trademark") in January 2004 to perform commercial construction projects.
- [19] The respondent had a crane operator's certification and experience in construction. As his reputation for good work grew, Trademark's business naturally grew with it. Work levels fluctuated with market conditions, economic conditions and weather. From 2002 to 2015, Trademark's business focused on commercial construction. In 2015, Trademark began to shift its business to focus on dock construction and boat lifts. It eventually occupied an important niche as one of the only marine construction companies in the Penticton area.
- [20] By all accounts, Trademark is well known and highly regarded in the South Okanagan area. Over the years, its revenues have fluctuated. It owns numerous pieces of equipment such as dump trucks, cranes, boom trucks and excavators which are required for its business operations and which require replacement from time to time.

B. Superior Septic Services Ltd.

- [21] The respondent purchased a proprietorship operating as Superior Septic in 2002, which he initially operated under Trademark. In December 2017, he incorporated Superior Septic Services Ltd. ("Superior Septic"). Superior Septic's business was rapidly growing at that time, so the respondent decided that it was prudent to separate the businesses for legitimate business and tax reasons.
- [22] Superior Septic's business is mainly porta-potty and event fence rentals.
- [23] In November 2022, Superior Septic purchased a competing septic services company based in Osoyoos, Darlorn Consulting & Investments Ltd., for \$1.5-million in total, with a \$500,000 down payment and vendor takeback of \$1-million on terms tied to the present action. The claimant's opposition to that purchase necessitated a court order to authorize the purchase. The respondent views the acquisition as critical for the long-term growth of Superior Septic.

[24] Between 2015 and 2022, Trademark and Superior Septic experienced substantial growth. The combined growth in share values of the corporations was \$2,290,000 gross, or \$1,737,000 net of distributive taxes.

C. 0867873 B.C. Ltd.

[25] The respondent incorporated 0867873 B.C. Ltd. ("086 Ltd.") in December 2009 as a holding company for commercial real estate.

[26] 086 Ltd. owns commercial property at 150 Commercial Place, Penticton, where Trademark and Superior Septic have their offices. Trademark and Superior Septic pay rent to 086 Ltd. In 2016, the respondent undertook a major renovation of the property.

[27] Trademark, Superior Septic and 086 Ltd. are the respondent's primary businesses. I shall refer to them collectively as the "Companies".

D. Trio Marine Group Inc.

[28] In spring 2015, the respondent and two partners formed Trio Marine Group Inc. ("Trio"). Trio's proposed business was to redevelop an area of Skaha Lake beach into a water park and recreational development, including constructing and operating a marina and restaurant. In May 2015, Trio entered into a four-year contract with the City of Penticton to operate the marina and restaurant.

[29] Trio attempted unsuccessfully to convince the City and public of the merits of a larger redevelopment during the contract. Trio did not renew when the contract ended in 2019. The respondent's evidence was that the entire venture was a loss.

IV. PROPERTY DEALINGS AND LIVING EXPENSES DURING THE RELATIONSHIP

[30] When the Relationship began, the claimant and Mr. Gibson were still in the process of dividing their property. At the time, the claimant and Mr. Gibson owned the Apex Cabin and Mr. Gibson also had a substantial tax debt. The respondent purchased Mr. Gibson's one-half interest in the Apex Cabin for \$80,000, which he financed by remortgaging the Uplands Ct Home to borrow \$100,000.

[31] After the respondent moved into the Lower Bench Rd Home, the parties renovated the Uplands Ct Home and began to operate a VRBO business out of it. The claimant managed this business by arranging bookings and cleaning the home between guests. Rental receipts were deposited into the parties' joint account.

[32] In January 2016, the respondent paid the claimant \$5,000 to cover past expenses on the Lower Bench Rd Home and the Apex Cabin. Since that time until very recently, after Separation, he paid all expenses related to the parties' real estate holdings, including property taxes, property insurance and utilities.

- [33] In July 2017, the parties contributed equally towards the down payment on the purchase of a townhouse located at 114 Clearview Road, Apex Mountain, for \$182,500 ("Apex Townhouse"). Trademark paid to renovate the property and the claimant assisted with interior design. After renovation, the claimant managed the rental of the Apex Townhouse and retained all rental income. The parties sold the Apex Townhouse in November 2021, dividing the net proceeds equally between them.
- [34] In August 2018, the parties purchased a chalet located at 124 Creekview Road, Apex Mountain, for \$525,000 ("Apex Chalet"). The claimant contributed roughly 22% of the down payment and the respondent the rest. The property was registered in the respondent's name because the claimant did not qualify for financing. The parties always used the Apex Chalet recreationally and it was never rented. The respondent spent considerable time at the Apex Chalet in the lead-up to Separation and used it as his primary residence from Separation until early 2022.
- [35] Throughout the Relationship, Trademark paid for improvements to both the Lower Bench Rd Home and the Uplands Ct Home, adding to their respective values.
- [36] During the Relationship, the respondent paid the majority of the parties' living and property-related expenses. The respondent and his corporations paid for most other expenses, including vacations, dining out, the Children's travel, extended health coverage, vehicles, utilities for all properties and mortgage payments on all properties save the Lower Bench Rd Home. The claimant paid the monthly mortgage payments for the Lower Bench Rd Home.
- [37] In April 2017, the respondent used the proceeds from the sale of the Robinson Ave Home to purchase a Carver Marina Boat for \$65,000 ("Carver Boat").

V. THE CLAIMANT'S INVOLVEMENT IN THE RESPONDENT'S BUSINESSES

- [38] During cross-examination, the claimant did her best to maximize her participation in the Companies. That participation generally comprised:
- a) online research for a dispatch GPS system for Trademark's trucks;
 - b) what the claimant refers to as "streamlining the business" to make employees more accountable;
 - c) assisting with the interior and exterior design and sourcing of office furniture for the expansion of Trademark's offices; and
 - d) assisting with interviewing staff when the former bookkeeper left.
- [39] The claimant admits that, other than when Trademark's building was undergoing renovations, she was rarely at Trademark's office in 2015 or 2016 and never after 2018.

- [40] The claimant never had a Trademark or Superior Septic email address, job title, official position or business cards. She considered herself a "partner", but had no authority over Trademark's employees. The claimant asserts that she made the respondent and Trademark's other staff act more professionally by reducing drinking and socializing on the job. It is apparent that she made staff uncomfortable. Indeed, tensions developed that resulted in the bookkeeper leaving Trademark's employ.

A. The Flood Contracts

- [41] The claimant maintains that she caused Trademark to bid on several contracts with the Regional District of Okanagan-Similkameen ("RDOS") and City of Penticton in 2017 and 2018 which were lucrative for the company. The contracts were for sand bag removal, breakwater restoration and flood damage remediation related to the unprecedented flooding on Okanagan Lake at that time ("Flood-Related Contracts").
- [42] The claimant suggested that Trademark bid on the contracts in 2017. The respondent was not convinced, but agreed to let the claimant submit a bid and organize the required resources. Trademark succeeded in its bid and earned \$287,133 in net income on those contracts, roughly half of Trademark's 2017 net income.
- [43] The claimant did not receive pay for her involvement in the contracts because it could jeopardize her Air Canada disability pension. Instead, the claimant was given free use of Trademark company vehicles, first a large Range Rover and later a BMW and another smaller Range Rover. Trademark purchased the latter two vehicles for the claimant. After Separation, Trademark transferred their ownership to the claimant.
- [44] The claimant was less involved in contracts in 2018. Her involvement was limited to delivering some sandbags as part of Trademark's contract with RDOS for sandbag delivery across the South Okanagan.
- [45] The 2018 contracts were also lucrative, but relatively less important for Trademark than in 2017. They generated approximately 10 percent of Trademark's \$3.27-million in total revenues.

B. The Trio Marina Project

- [46] Trio had just started operating the water park and restaurant on Skaha Lake when the Relationship began. The claimant became heavily involved in planning the proposed expansion, notably by attending meetings and designing the restaurant interior and menu.
- [47] As noted above, Trio ended up creating a loss for the respondent and ceased activity in 2019.

C. The Prince George Apartment Block

- [48] Following the success of the Flood-Related Contracts, the parties sought opportunities to invest in real estate. In March 2018, 086 Ltd. purchased an apartment block in Prince George for \$895,000 ("Apartment Block"). 086 Ltd. borrowed the purchase and closing costs of \$906,809, which were comprised of a deposit of \$159,760 and mortgage proceeds of \$747,049.

VI. PERIODS OF SEPARATION DURING THE RELATIONSHIP

- [49] The Relationship was volatile and characterized by continual arguments between the parties. Most often, fights centred on the claimant's disapproval of the respondent's consumption of drugs and alcohol. Arguments also occurred over what the respondent considered to be extravagant purchases by the claimant. Finally, the parties argued with increasing frequency about the claimant's demands for the respondent to share ownership of the Companies with her.
- [50] These conflicts led to periods of estrangement during the Relationship.
- [51] The first estrangement occurred in the summer of 2016. The respondent and one of his employees returned home in an apparent state of inebriation one night, and the claimant locked him out of the house. She says she had become fed up with his heavy drinking habits over the preceding year. The respondent spent the next four to six weeks living in a trailer in a friend's back yard. During this separation, they continued to communicate and even spent some time together. After a month in the trailer, the respondent wrote to the claimant to tell her that he shared her vision going forward. The parties reconciled on that basis, and he returned to the Lower Bench Rd Home.
- [52] The second estrangement occurred in the fall of 2017. The claimant says the respondent came home drunk and threatened her. She locked him out of the Lower Bench Rd Home and they lived apart for two to three weeks.
- [53] The third estrangement occurred after the respondent allegedly assaulted the claimant on May 22, 2018. The respondent was arrested and charged with assault and threats. He was released on terms that included no contact with the claimant and a court date was set for October 2018. The parties continued to communicate despite the no-contact order. The respondent agreed to attend counselling. The claimant describes May to October 2018 as the best months of the Relationship because the respondent's behaviour drastically improved.
- [54] In February 2019, P.G. disclosed that D.H. had engaged in inappropriate sexual behaviour with her in the year prior. The RCMP and Ministry of Child and Family Development ("MCFD") became involved and the parties agreed that D.H. could not be in the same house as P.G.

- [55] P.G.'s allegations severely impacted the family dynamics and sparked another period of estrangement and tension. In order to spend time with D.H. during his parenting weeks, the respondent and his sons lived at either the Apex Chalet or on the Carver Boat, depending on the weather. Further, the claimant's prior friendship with the respondent's ex-wife ended.
- [56] On July 6, 2020, the parties separated for good after the respondent allegedly held the claimant down and threw her phone into the lake from the Carver Boat. The parties again continued to communicate and see each other from time to time. Indeed, between July and October 2020, the parties attempted to reconcile on trips to Whistler, BC, and Banff, AB. They also attended some marriage counselling.
- [57] The final straw for the claimant was an incident at a restaurant that left her in tears. Even after that incident, the parties continued to communicate. The respondent asked the claimant to help renovate and prepare the Manufactured Home for sale in exchange for him paying for repairs to the claimant's teeth. It turns out those costs were substantially more than the respondent anticipated so he paid only a portion of them. When the Manufactured Home was sold, the respondent put most of the proceeds towards arrears of spousal support owing to Martina. However, the respondent continued to pay most expenses related to all properties.

VII. INCOME, EXPENSES AND FINANCES OF THE PARTIES

- [58] The claimant's income is straightforward. During the Relationship she received an Air Canada pension, long-term disability benefits of \$1,676 monthly and CPP disability benefits of \$1,395 monthly. She also continues to receive spousal support of \$4,274 per month from the respondent pursuant to the Davies Order, and \$1,250 per month from Mr. Gibson. On May 22, 2022, she cashed out her Air Canada pension receiving \$174,200.52 in cash together with a locked-in portion of \$214,618.18 which she has invested.
- [59] The respondent's income is more complicated. What he has available for support purposes is unclear because his pre-tax income fluctuates without clear explanation.
- [60] Generally speaking, the parties maintained separate bank accounts throughout the relationship. The exception was a joint BMO account opened and used to receive VRBO rental income and pay some family expenses.
- [61] As earlier mentioned, throughout the Relationship, Trademark or the respondent paid most of the couple's expenses. All vehicles used by the parties were purchased by Trademark.

VIII. OTHER WITNESSES

A. Robyn Gibson

- [62] Mr. Gibson was the claimant's spouse from 2004 to 2014, and is P.G.'s father. He testified in this matter.

- [63] When he met the claimant, she was on disability from Air Canada and trying to work as an interior designer. She looked after their home, childcare, and oversaw the extensive renovations they did to their home.
- [64] He explained that it was hard for him to understand the claimant's anxiety disability because she usually functioned at a high level. He stated that if she took on too much, she would become overwhelmed and have to isolate in bed for a few days. Her condition improved with counselling during their relationship.
- [65] On separation, the two agreed that he would pay \$2,250 in spousal support and \$1,000 in child support for P.G. The Lower Bench Rd Home would belong to the claimant. There was never a formal agreement between them. He testified that he agreed to sell his interest in the Apex Cabin to the respondent so that he could purchase a home of his own. It is apparent that Mr. Gibson was also in need of money to pay outstanding tax debts.
- [66] One year after separation, Mr. Gibson unilaterally reduced spousal support from \$2,250 to \$1,250 per month because he claimed he could no longer afford the higher payment. This upset the claimant because she felt it was unfair, but she never asked him for more support. He says he plans to pay spousal support as long as he is able.
- [67] Mr. Gibson pays for P.G.'s food, shelter, gym pass, supplements and other day-to-day expenses. He also holds a \$55,000 RESP for P.G.'s university education.
- [68] He and the claimant discussed her running an Airbnb business and flower shop out of her home and carriage house that would provide long-term financial support to her. He confirmed that the claimant has the aptitude and acumen for success in business even with her anxiety condition.
- [69] He testified that after the claimant and respondent started living together, the claimant was the primary caregiver for the Children and also became quite busy in her role as the respondent's assistant and consultant.
- [70] He described meeting privately with the respondent on two occasions to discuss the claimant. At the first meeting in 2016, the respondent wanted to discuss the claimant's anxiety so that he could understand it better. At the second meeting in 2018 or 2019, the respondent visited him at home to discuss the claimant's argumentative behaviour about assets.
- [71] Mr. Gibson's testimony fully supported the claimant's position that she was heavily involved in the respondent's businesses. He testified that the respondent considered himself and the claimant to be a "power couple", and called the claimant a "king-maker". He thought the parties respected each other's roles and that the respondent continually sought the claimant's input. In his opinion, both parties were passionate about growing their business and real estate holdings. He thought the claimant broadened the respondent's horizons.

- [72] Despite earning \$120,000 per year as an independent sales representative, Mr. Gibson is delinquent in paying his income taxes. He has not filed his personal tax returns since 2015. He has made some payments since then, including around \$60,000 from the sale of his share of the Apex Cabin to the respondent. He has not paid any of the debt since 2019, claiming his focus was instead on ensuring P.G. was supported.
- [73] He also confirmed that the respondent never spent any time with P.G. other than family outings and that P.G. and the respondent have no ongoing relationship.
- [74] Mr. Gibson did not file a response or comply with the respondent's formal request for a list of documents, despite being a party to this action. He filed an F8 on February 14, 2022, which listed expenses that he was not paying, such as income taxes.
- [75] It was clear that Mr. Gibson is aligned with the claimant.

B. Lesley Ross

- [76] Ms. Lesley Ross is a freelance bookkeeper living and working in Penticton. She has known the claimant for nearly 30 years, and has been her close friend for 15 years.
- [77] Similar to Mr. Gibson, she too supported the claimant's position respecting her involvement in the respondent's businesses and the respondent's dependence on the claimant in their day-to-day business and personal lives.
- [78] It is apparent from Ms. Ross's testimony that the claimant is a very capable and talented person. Ms. Ross spent much of her evidence expounding the claimant's virtues in home design, business management, running the VRBO rental, staging, cleaning, and renovation. According to her, the claimant was responsible for all cooking, cleaning and household chores and for looking after the Children. She says the claimant had no idle time because she was always on the go with domestic chores, children or running the respondent's businesses, for instance by answering emails. She says the claimant was actively involved in starting up new ventures, sourcing and pricing. She says the respondent referred to everything as "ours", meaning his and the claimant's. She testified that the respondent often stated that "together we are a power house".
- [79] She agreed that the claimant and respondent often fought. She also confirmed that the claimant can be easily overwhelmed. She said that before she met the respondent, the claimant was a homebody who did not socialize much outside the home.
- [80] She admitted that the respondent was well-known and well-connected in the Penticton business community.
- [81] Ms. Ross is also clearly aligned with the claimant. Much of her evidence was hearsay.

C. Jeff Plant

- [82] Mr. Plant currently works for the City of Penticton as its events and sports supervisor. He has known the respondent since the early 2000s and considers him a friend. Mr. Plant used to run an events company, and rented portable toilets from Superior Septic. In approximately 2008, the events fencing supplier he had been using increased its rates for fence rentals by some 60 percent, so he suggested to the respondent that Superior Septic enter the events fencing business.
- [83] Mr. Plant described the respondent as a hard worker with an excellent reputation. He said the respondent is one of the few remaining "handshake" men, who consider a deal made on a handshake to be a binding promise.

D. Bruce Armour

- [84] Mr. Bruce Armour is Trademark's dock construction manager. He has known the respondent for approximately 21 years. He runs the dock construction crews and sales, deals with clients, orders material and supervises construction. He considers the respondent to be a friend outside of work. He described in some detail Trademark's operations, including work completed in 2017 during and after the floods such as cleaning up debris, rebuilding breakwaters and dock infrastructure, and installing aqua dams and sandbags.
- [85] He met the claimant shortly after the parties started dating. He confirmed that her biggest involvement with Trademark was securing the 2017 sandbagging contract, but that she also did some design layout and colour palate work for the expansion of 150 Commercial Place. As far as he was aware, she was never an employee of Trademark and was rarely in the office. She did not instruct Trademark's employees.
- [86] He described the claimant disparaging the respondent in front of Trademark's employees at two separate corporate functions, including threatening him. He recalls that she was upset with the respondent's use of drugs and alcohol.
- [87] He described the respondent as a hard worker and a good manager. He said the respondent is always working and thinking ahead, taking on the necessary work and drumming up more business. He manages all staff, mechanics, scheduling, repairs and maintenance, accounting, reporting, and collections, while also running cranes as needed and performing any other tasks that need doing.
- [88] He described the challenges Trademark suffered in 2021. Trademark was moving around three acres of equipment from 150 Commercial Place to a new location, which required infrastructure and other work. It took significant resources for many months. The respondent had hired a general manager and another dock manager to help him run the businesses at great expense, neither of whom ultimately worked out. At the time, Covid-19 was disrupting supply chains, increasing the cost of supplies and shipping substantially.

E. Martina Ivandic

- [89] Ms. Martina Ivandic is the respondent's ex-wife. They had two sons during their 23-year relationship, B.H. and D.H. When they separated in 2008, Ms. Ivandic drafted a separation agreement that resolved all issues between them, including property division and parenting time.
- [90] The separation agreement provided for Ms. Ivandic and the respondent to have their sons on alternating weeks. Accordingly, after the parties began cohabiting in May 2015, B.H. and D.H. lived with them every second week. One year later, B.H. decided that he no longer wanted to live with the claimant and began spending more time with his mother. By May 2018, he was essentially living with her full-time. At Christmas 2018, D.H. also began to live full-time with her. Ms. Ivandic understood that her sons were tired of the arguing, "chaos" and "insanity" at the claimant's home. From her perspective, it was not a happy household.
- [91] Ms. Ivandic's relationship with the claimant began civilly. They discussed co-parenting issues. The claimant's parenting style was far stricter than Ms. Ivandic's, so the boys struggled somewhat. Ms. Ivandic and the claimant chatted frequently on social media. Ms. Ivandic sympathized with the claimant in her arguments over the respondent's drinking behaviour, of which Ms. Ivandic also disapproved. Their relationship worsened in December 2018 and they have not communicated since. Since then, neither B.H. nor D.H. have wanted anything to do with the claimant.
- [92] Ms. Ivandic took the position that she and the respondent built the Manufactured Home, then gifted it to the respondent's mother. However, her separation agreement with the respondent stipulated that it would belong to the respondent, not his mother. She explained that she included it in the separation agreement because she wanted to ensure that the respondent would inherit the Manufactured Home if his mother did not have a will.
- [93] Ms. Ivandic also described the evolution of Superior Septic and Trademark from their infancy in the early 2000s. She credits the respondent's foresight and hard work in growing both businesses from basically nothing to what they are today. She stated that the growth was ninety percent word of mouth. She described the respondent as ambitious, a very hard worker, friendly and personable, all traits that attracted business.

F. Grant Klatik

- [94] Mr. Grant Klatik is a realtor in the Penticton area and has known the respondent for 10 to 12 years. He has known the claimant for eight or nine years. In the 2017 and 2018 timeframe, he helped the parties view and make offers on properties around BC, including the purchase of the Apartment Block in Prince George. He stated that they were looking at investment opportunities to build a real estate portfolio. He confirmed that both parties were present and involved in the discussions.

[95] He uses Trademark and Superior Septic's services from time to time for his real estate clients. He stated that in his experience all businesses in Penticton have gone up in value since 2015.

[96] He too described the respondent as having a good work ethic and a good reputation in the community.

G. Harvey Hunchak

[97] Mr. Harvey Hunchak was the original owner of Superior Septic, from whom the respondent purchased it in 2002. He has since continued working for Superior Septic. He stated that Superior Septic has grown from a small operation to quite a large one under the respondent's direct management. He confirmed that the pandemic negatively impacted a good portion of its business in 2020 and 2021. He described dismantling and moving Superior Septic from 150 Commercial Place to a new location in 2021.

[98] He too spoke positively of the respondent's work ethic, calling him a "go-getter" who would seek out projects. He said the respondent has a good reputation in the community and is generous.

IX. POSITIONS OF THE PARTIES

A. Claimant's Position

[99] The claimant argues that there should be an equal division of all property acquired during the Relationship, as well as of the increase in the value of the excluded property since the Relationship began.

[100] The theme of the claimant's case is that, from the time she met the respondent, she was intimately involved in many aspects of his businesses. She claims to have been the respondent's business partner in researching, viewing and purchasing real estate properties including the Apartment Block in Prince George and the Apex Chalet, running the VRBO business out of the Uplands Ct Home, managing the renovation of 150 Commercial Place, finding properties for equipment storage, and the like. She says they intended to develop a portfolio of real estate investments that would provide them with passive rental income in their retirement years.

[101] She says they were effectively joined at the hip in all personal, domestic and business dealings, each contributing towards the common goal of growing wealth. She points to texts and emails authored by the respondent in support of her position.

[102] She stresses her involvement in various aspects of the respondent's businesses during the Relationship. I have already referred to a number of the examples she relies upon, which include:

a) assisting with the renovation of Trio's marina and restaurant business on Skaha Lake;

- b) managing and designing the expansion of Trademark's building in 2017 and 2018;
- c) shifting the work culture at Trademark to be more professional;
- d) sourcing and arranging additional property for storing Trademark's equipment;
- e) renovating the Uplands Ct Home and running a VRBO business out of it from August 2015;
- f) initiating Trademark's lucrative 2017 bid on the Flood-Related Contracts with RDOS and the City of Penticton, and managing the contract until its completion;
- g) renovating and managing the rental of the Apex Townhouse;
- h) handling residential tenancy and other disputes;
- i) researching properties that could form part of a passive-income retirement portfolio, culminating in the purchase of the Apartment Block in spring 2018;
- j) contributing to the purchase of the Apex Chalet in July 2018 and preparing it for use as a family retreat the following ski season; and
- k) researching business opportunities for Superior Septic including fencing rentals and marketing that business.

[103] The claimant says that she and the respondent discussed business almost daily, each contributing about how to improve and increase operations. The respondent would often prepare notes setting out the personnel hierarchy of the businesses and always had the claimant's name at the top of the hierarchy list.

[104] In addition to these efforts, she ran the blended household by preparing meals, driving the Children to and from school, meeting with teachers, and attending to their medical and other needs.

[105] The claimant does not claim to have been engaged equally in all aspects of the businesses, but instead asserts that she provided direct and indirect assistance and management. She says that by maintaining the home, looking after the Children every second week, and otherwise supporting the respondent, she was equally engaged in the success of the broader family venture of businesses, real estate and household.

[106] The claimant admits receiving rental income from the Apex Cabin and property she owned in Manitoba without declaring it as such for income tax purposes.

B. Respondent's Position

- [107] The respondent strongly disputes the claimant's level of involvement in the Companies. The respondent asserts that he had been an established businessman for many years when he met the claimant in March 2015. He was the sole director and owner of the Companies. He says that, prior to the Relationship, he had already built a good reputation in the community and had good relationships with local governments, which he credits for the Companies' successes during the Relationship including the Flood-Related Contracts.
- [108] The respondent argues that an equal division of the increase in the value of the Companies since the Relationship began would be significantly unfair, because he had established them and made them successful before he met the claimant and afterwards.
- [109] The respondent does not dispute that the claimant helped him by looking after their domestic affairs while he worked, including managing the household and caring for the Children when they lived with them and he concedes that she made some direct contributions to his businesses although he says they were relatively minor.
- [110] The respondent also concedes that he and the claimant periodically discussed estate and tax planning with accountants and financial planners. Those discussions addressed potential reorganization to give the claimant a direct stake in the Companies. That reorganization never occurred, although the parties did incorporate 1214157 BC Ltd. ("121 Co.") on June 26, 2019, with each of them holding equal shares. Nothing was done with 121 Co. and it remains a shell company.
- [111] Overall, the respondent seeks the equal division of most family property, with the increase in the value of the Companies reapportioned 90% in his favour. He seeks a determination that the Carver Boat and the proceeds from the sale of the Manufactured Home are excluded property.
- [112] He submits that his income under the Federal Child Support Guidelines, SOR/97-175 [Guidelines] should reflect the cashflow available from his pre-tax corporate income within the Companies, which accounts for capital purchases and debt payments necessary to effectively carry on business. He submits that a three-year average of his earnings is appropriate to account for the significant fluctuations in the profits earned by the Companies.

X. EVIDENTIARY CONCLUSIONS

A. The Parties

- [113] The Relationship developed quickly and proved to be rocky and volatile for most of its duration. The claimant aptly described it as a "roller-coaster".

- [114] I will make a few general observations after having heard the parties testify. The claimant has a strong personality, whereas the respondent is more easygoing. From the outset, the claimant was determined to change the respondent's behaviour, and thereby change her perception of his public persona from blue-collar worker to professional businessman. Her modus operandi included an attempt to take control of his company offices and run them as she felt they should operate. This created conflict with the respondent and company employees.
- [115] Overall, I am satisfied that both parties contributed to the household and family property in their own ways. However, I conclude that the claimant was far less involved in the Companies than she attempted to suggest.
- [116] The claimant began many of her answers in cross-examination with gratuitous comments aimed at making the respondent or his friends or employees look incompetent or unprofessional. At points, she disparaged the respondent, his friends and his family. She implied that she directed the Companies, that she developed new ideas for growth, and that the Companies would have failed without her. I found this evidence unconvincing and disingenuous.
- [117] For his part, the respondent tended to downplay the extent of the claimant's involvement with the Companies. As mentioned, he has an easygoing personality and was content to involve her in the Companies as she wished.
- [118] For years prior to the Relationship, the respondent worked hard to grow the Companies. As an equipment operator and businessman, he worked alongside his employees and operated Trademark's equipment. His reputation for good work grew over time. Business and profitability fluctuated year by year. As an entrepreneur, he looked for new business opportunities, such as the Trio Marine project in 2015.

B. The Relationship

- [119] The Relationship was rocky. The parties got along sometimes, and other times they did not. I note the following with respect to the character of the Relationship:
- a) The respondent's use of alcohol and drugs was a common source of conflict. The claimant did not approve of it. However, I accept the respondent's evidence that the claimant tended to exaggerate his drug and alcohol use, that she was often intolerant, and that she treated him harshly.
 - b) There were multiple periods of estrangement, as outlined above. The respondent's use of alcohol or drugs was generally the trigger. During these periods, the parties continued to spend time together and eventually reconciled. Indeed, they continued to see one another after their final separation in July 2020 until the Relationship ended for good in March 2021.

C. The Parties' Roles During the Relationship

- [120] Throughout the Relationship, the respondent primarily worked at the Companies, while the claimant was responsible for homemaking. The claimant's responsibilities were cooking, cleaning, smaller-scale household shopping, and childcare when the Children were living with the parties.
- [121] The claimant made no financial contributions to the Companies during the Relationship. She did, however, contribute some time and effort to them. She was primarily responsible for the 2017 portion of the lucrative Flood-Related Contracts. She helped with Trio Marine's plans to develop the Skaha Lake marina. She assisted with interior design for the Companies' projects and for the parties' own properties. She acted as a general sounding board and consultant in business discussions with the respondent, and assisted as needed with errands and other miscellaneous tasks related to business. Aside from delivering some sandbags in 2018, she was not directly involved in the labour and equipment-intensive core work of the Companies. These contributions were minor and did little to increase the value of the Companies.
- [122] The claimant did not receive pay for these contributions, but was compensated with gifts of luxury vehicles that she still owns.
- [123] The claimant considered herself the respondent's business partner during the Relationship. In 2017 and 2018, the parties looked at developing and growing a real estate portfolio together. Along with the respondent's realtor, both viewed properties, made offers and eventually purchased the Apartment Block. The purchase was financed entirely with borrowed funds.
- [124] The claimant did not bring any experience or expertise in accounting, bookkeeping, management, operations, or marketing to the Companies. She has never been anyone's boss, and was not a boss at the Companies. She never contributed financing to the Companies and took no financial risks such as encumbering her assets to help the Companies.
- [125] The respondent made all financial contributions to the Companies with borrowed funds during the Relationship. The Companies increased in value because of his work ethic, reputation and goodwill, as well as the Companies' natural growth and momentum from the years prior to the Relationship.
- [126] The parties ran their home and business without any requirement to account to one another. The lack of accounting between the parties reflects their general intention to share.

- [127] The respondent paid the lion's share of the parties' expenses, mostly using his corporate credit card. The respondent provided the following to the claimant: two vehicles, breast implants, new teeth, vacations, property expenses, rental income, and free and unfettered access to the parties' joint bank account. In addition, Trademark paid for renovations and upgrades to the Lower Bench Rd Home and the properties on Apex Mountain. The claimant paid the mortgage on the Lower Bench Rd Home.
- [128] Each year, the Companies' accountants allocated the respondent's personal expenses that the Companies had paid as either dividends or reduction of shareholder's loans to him.

D. Corporate Reorganization Meetings with Advisors

- [129] Throughout the Relationship, the claimant pressured the respondent to make her an owner of the Companies. She wanted to become a shareholder because of their plans to make a life together and her contributions to the Companies. The respondent had built the Companies for years prior to the Relationship and was lukewarm to the idea of the claimant becoming an equal owner with him. However, he felt she should be recognized in some fashion and was prepared to consider sharing any new ventures equally with her. The respondent's reluctance led to arguments between the parties.
- [130] Beginning in 2017, the parties began meeting with financial advisors and accountants about how to structure their affairs as they moved forward together. These meetings were prompted by the claimant's demands that she have an ownership interest in the Companies.
- [131] The respondent's position is that only preliminary discussions regarding corporate reorganization occurred, and there was no final agreement. He only agreed to the meetings because of ultimatums and pressure from the claimant and never intended to finalize them. He characterized the meetings as information-gathering exercises by the parties' various advisors. He agrees that the parties should share equally in the growth of all pre-Relationship assets other than the Companies' shares.
- [132] The claimant's position is that the meetings were the culmination of agreements she and the respondent made that she was going to be a co-owner of the Companies. She relies on various documentary evidence in support of her position.
- [133] The respondent acknowledged the claimant's contributions to the Companies in text messages. For instance, after the claimant served him with the notice of family claim, he wrote the following messages to persuade her to reconcile and drop the action:

relax your entitled to your half. Stop the war and let's get things back on track

by common law your entitled to half

- [134] Documents authored by financial advisors and accountants confirm discussions regarding the reorganization of the Companies' corporate structures with the claimant having an interest in them. In January 2019, the respondent retained Mr. Peter MacIntosh, an accountant, to review corporate structure planning options. After meeting with the parties, Mr. MacIntosh proposed three options going forward: i) maintain the status quo; ii) a "freeze" of the value of the respondent's shares and the creation of a holding company to own the Companies, with the value of the shares reflected in preferred shares to the respondent and each party having common shares valued at zero at the time of the freeze; and iii) the creation of a family trust that would own the respondent's corporations with the parties and the Children being its beneficiaries. I note that in the absence of any formal agreements, the FLA's presumptive solution is similar to the second option if the freeze occurred at the start of the Relationship.
- [135] Another proposal had the respondent owning all shares of the Companies, and the claimant and respondent together owning a new corporation for the purpose of holding future real estate.
- [136] The respondent's accountants sent him a formal engagement letter to facilitate proceeding with corporate reorganization in 2019, but he never signed it. Their advisors were recommending the parties decide on an action plan soon because the tax implications would become more complicated over time.
- [137] Throughout his cross-examination, the respondent referred to these options and proposals as being "sales pitches" with which he disagreed. He similarly wrote in an affidavit sworn on June 22, 2021:
- [T]hese discussions went on for some time but did not come to fruition. As far as I was concerned, I was prepared to share with her any new business or increase in value of the corporations on a go forward basis. My plan was for the corporations to freeze their value to me at the then current values by exchanging my existing common shares for redeemable preferred shares. The preferred shares would have a value commensurate with the then current value of the company.
- [138] I do not agree with the respondent's characterization. His attempt to dismiss the corporate restructuring recommendations was not persuasive and was an obvious attempt to backpedal away from the true nature of the discussions. It was inconsistent with his discovery evidence. I conclude that the respondent was leaning towards proceeding with the "freeze" option, but that he changed his mind because of his concerns about the Relationship's stability. I conclude that the respondent wanted to continue the Relationship at the time, but felt immense pressure and increasing discomfort because of the claimant's demands. In order to appease and stall her, he acknowledged her contributions and the unfairness of everything being in his name.

- [139] I am satisfied that the focus of Mr. MacIntosh's recommendation was to freeze the value of the parties' assets at the start of the Relationship and then divide the growth of those assets during the Relationship equally. By 2019, it was apparent to all that the value of the Companies shares had increased significantly since 2015, which made the respondent extremely hesitant to proceed.
- [140] During their arguments, the claimant sent self-serving emails to the respondent that outlined her version of their discussions and purported agreements. She assumed she was an equal partner in all of the respondent's businesses and wanted her role to be formalized.
- [141] Ultimately, I find that the discussions never progressed to become anything more than preliminary. The claimant may have seen herself as an equal partner in the Companies, and wanted to be so. However, I conclude that was not the reality.
- [142] In the end, there was no agreement to affect the corporate reorganizations discussed above. The reorganization the claimant desired was an expensive proposition. In the face of the instability and uncertain future of the Relationship, the respondent was understandably reluctant to incur the expense and risk.

XI. ISSUES

- [143] The central issue is the division of family property, and specifically whether the equal division of the increase in the Companies' value would be significantly unfair to the respondent under s. 95 of the FLA.
- [144] The other issues are the claimant's claims for spousal and child support.

XII. DIVISION OF PROPERTY

A. Relevant Legal Principles

- [145] The FLA establishes a presumption that each spouse will acquire an undivided one-half interest in family property and debt upon the breakdown of a marriage-like relationship. The principles relevant to the division of property issue in this case are set out in ss. 81, 84, 85, 87 and 95 of the FLA and can briefly be summarized as follows:
- a) All real and personal property that is owned by at least one spouse at the time of separation is family property unless it is excluded property: ss. 84(1), 85.
 - b) Family property includes a share or an interest in a corporation, partnership, business or a venture: s. 84(2)(a).
 - c) Family property includes any increase in the value of excluded property since the later of the date the relationship began or the date the excluded property was acquired: s. 84(2)(g).
 - d) Excluded property includes property acquired by a party before the relationship began, inheritances, gifts from a third party and any property derived from such property: s. 85(1).

- e) Excluded property also includes property derived from excluded property or the disposition of excluded property: s. 85(1)(g).
- f) Unless an agreement or order provides otherwise, the value of family property must be based on its fair market value at the date of trial: s. 87.
- g) Family property is to be divided equally unless it would be "significantly unfair" to do so: ss. 81 and 95.
- h) Excluded property is not to be the subject of division unless it would be "significantly unfair" not to divide it: s. 96.

Banh v. Chrysler, 2022 BCCA 74 at para. 23.

[146] The Court of Appeal has previously noted that one of the overarching motivations behind the FLA's property regime is to provide certainty and eliminate the need for courts to engage in a comparative analysis of the respective contributions of the parties when dividing family property: *Venables v. Venables*, 2019 BCCA 281; *Jaszczewska v. Kostanski*, 2016 BCCA 286 at paras. 36-38; *Banh* at para. 23. The Court wrote in *Venables*:

[85] The category of "family property" in s. 84 of the FLA recognizes that many modern relationships are like a partnership or joint venture, with give and take and various forms of contribution, including indirect contribution through child care, household management and other means, and so presumptively any acquisition or growth in assets during that relationship should be shared equally upon the relationship ending. Because of the wide variety of indirect contributions made during a spousal relationship, a spouse is not required to directly contribute to family property in order to be entitled to a presumptive equal share in it.

...

[100] To put it another way, a spouse is not required to contribute to family property to be presumptively entitled to equal division: *Namdarpour* at para. 61. Indeed, the approach to the division of family property under the FLA generally discourages a comparison of relative contributions to property acquired during the marriage: *Pisarski* at paras. 35-36.

[147] When considering whether an equal division of family property would be significantly unfair such that reapportionment should occur, the court must consider only those factors set out in s. 95 and must not account for the party's respective contributions, except in very limited circumstances: *Banh* at paras. 30-35. The relevant s. 95 factors are:

- (a) the duration of the relationship between the spouses;
- (b) the terms of any agreement between the spouses;
- (c) a spouse's contribution to the career or career potential of the other spouse;

...

- (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.

[148] When considering these factors, the court has discretion to look into the origins of family property. The Court in Venables wrote:

[112] In not expressly dealing with the question of what happens when excluded property becomes family property, but by providing for reapportionment if equal division of family property would be significantly unfair, the FLA left it open to the court to consider, as a factor justifying reapportionment, the origins of family property as formerly-excluded property contributed by one spouse. The degree of attention paid to this factor will, as in all property division matters, depend on all the circumstances.

[149] While there is a presumption of equal division of family property under which entitlement exists independent of contributions or use, unequal contribution can be a relevant consideration in reapportionment: Jaszczewska at paras. 38, 44. Specifically, s. 95(2)(i) of the FLA provides a broad discretion to consider "other factors" provided they are part of the economic characteristics of a spousal relationship: Singh v. Singh, 2020 BCCA 21 at paras. 138-40.

B. Excluded Property

[150] The parties have substantially agreed on the property which is to be excluded by virtue of being acquired prior to the Relationship as follows:

The Claimant:

- a) Air Canada Pension: the pension is excluded and has now been paid out to the claimant and deposited to her IA Financial Group accounts: \$150,000 non-registered and \$214,618 to a registered savings plan.
- b) The Lower Bench Rd Home: its value of \$382,584 at the beginning of the Relationship is excluded. The parties agree its equity increased during the Relationship by \$545,020.

- c) The Apex Cabin: one-half of the equity in the Apex Cabin as at the date the respondent purchased Mr. Gibson's interest is excluded. As at March 4, 2022, the fair market value was \$395,000. The parties agree that the excluded value is \$40,000 and that they will share equally in the balance.
- d) The claimant's property in Pine Falls, Manitoba: the claimant acquired this property in 1999 and sold it in September 1, 2020 for proceeds of \$155,006. These proceeds are excluded.
- e) The claimant's Tax-Free Savings Account: its value of \$43,000 as at the date of cohabitation is excluded.
- f) The claimant's miscellaneous pre-Relationship jewellery is excluded.
- g) The claimant's bank accounts with minimal and fluctuating balances are excluded.

The Respondent:

- h) The Uplands Ct Home: its equity of \$112,588 as at the date of cohabitation is excluded. On September 10, 2015, the respondent increased the mortgage by \$100,000 to secure funds to purchase Mr. Gibson's interest in the Apex Cabin. At March 10, 2023, the amount owing on the mortgage was \$363,455, resulting in a net equity of \$496,544. The parties agree that net increase in equity during the Relationship was \$383,956.
- i) Shares in Trademark and 086 Ltd.: their value as at the date of cohabitation is excluded. On May 1, 2015, the Trademark shares were valued at \$1,123,000 and 086 Ltd.'s shares at \$160,000.
- j) Superior Septic: at the date of cohabitation, Superior Septic was run through Trademark. It was incorporated during the Relationship on December 19, 2017.
- k) The Companies: as at May 31, 2022, the mid-point of the total valuations of Trademark, 086 Ltd. and Superior Septic is \$3,575,000. The mid-point increase in the values of those shares during the Relationship, without accounting for distributive taxes is \$2,290,000.
- l) The respondent's vehicles owned prior to cohabitation are excluded.
- m) Trio Marine: its shares are valued at zero.
- n) The Manufactured Home: the respondent purchased it in 2008 as a residence for his mother. It was valued at \$25,000 upon cohabitation and sold on November 5, 2021, for \$112,000. The claimant disputes that the increase in value during the relationship is excluded.
- o) The Robinson Ave Home: its value is excluded. The respondent purchased it in 2009 for \$315,000 and sold it on November 9, 2016 for \$405,000.
- p) The Carver Boat: the claimant disputes this exclusion claimed by the respondent.

C. Agreed and Disputed Valuations

[151] The valuations of the Companies are evidenced in joint expert reports prepared by Mr. Derek Sanders, a Chartered Business Valuator with SVG Capital Group. The parties largely agree on the valuations both at the time the Relationship began and at the time of Separation, including the share valuations. They disagree on whether any latent or distributive taxes should be considered in the determining the valuations.

[152] The parties agree that equal division is appropriate for all non-corporate property other than the Carver Boat and the proceeds from the sale of the Manufactured Home.

[153] The value to be placed on the Oasis Condo proceeds is not agreed to.

[154] The increase in the values of the parties' significant properties during the Relationship are set out below:

a)

The Apex Chalet:

\$443,385.00

b)

The Apex Cabin:

\$195,000.00

c)

Lower Bench Road Home:

\$545,020.00

d)

Uplands Court Home:

\$383,957.00

e)

Oasis Condo:

\$27,522.50 - \$91,100.00

f)

Manufactured Home:

\$87,000.00

g)

Carver Boat:

\$61,000.00

D. The Increased Value of the Shares of the Companies

[155] The central dispute between the parties concerns how the significant increased value of the Companies' shares during the Relationship should be divided. The respondent seeks a 90-10 split in his favour, while the claimant seeks equal division. The respondent has the burden of establishing that an equal division would be significantly unfair.

[156] There is no debate that Trademark and 086 Ltd. are excluded property. Trademark was incorporated in 2004 and 086 Ltd. was incorporated in 2009. For legitimate business and tax reasons, Superior Septic was incorporated in December 2017 for the purpose of separating its business affairs from Trademark, who had operated Superior Septic since 2004. According to the respondent, the possibility of the claimant becoming a shareholder of Superior Septic upon its incorporation was never discussed.

[157] The parties agree to use the mid-point between Mr. Sanders' low and high valuations of Trademark and 086 Ltd. at the beginning of the Relationship. Without considering distributive taxes, their values totalled \$1,285,000, broken down as follows:

a)

Trademark:

\$1,125,000

b)

086 Ltd.:

\$160,000

[158] They also agree to use the mid-point of Mr. Sanders' low and high valuations of the Companies as at May 31, 2022. Again, without considering distributive taxes, their values totalled \$3,575,000, broken down as follows:

a)

Trademark:

\$825,000

b)

086 Ltd.:

\$1,250,000

c)

Superior Septic:

\$1,500,000

- [159] Accordingly, they agree that the total increased value of the Companies' shares during the Relationship, based on mid-point valuations, was \$2,290,000. Adjusted for taxes, the mid-point valuation is \$1,980,000.
- [160] Relying on the principles set out by the Court of Appeal in *Banh, Jaszczewska, and Singh*, the claimant argues that an equal division of the increased value of the Companies' shares would be in keeping with the intent of the FLA to provide certainty and reduce litigation by not considering the relative contributions of spouses. She contends that even if one disregards the presumption of equal division and considers her relative contributions, she still contributed in many ways to the increased value of the shares. She says that excluding the pre-Relationship value of the Trademark and 086 Ltd. shares is enough to recognize the respondent's pre-Relationship contributions.
- [161] The respondent responds by relying heavily of s. 95 of the FLA to argue that he has established that it would be significantly unfair to divide the increased value of the Companies equally, on consideration of all relevant factors. He contends that most of the increase in the share values was due to his efforts, reputation, resources, financial contributions, labour, expertise and hard work.
- [162] It is clear that the Companies regularly employed the respondent prior to, during and after the Relationship. However, there is no hard evidence that the entire increase in share values was beyond market trends as he suggests. Indeed, the evidence suggests that roughly fifty percent of the increase resulted directly from the passive increase in the value of real estate owned by 086 Ltd.
- [163] I accept that the respondent worked hard establishing and growing the Companies' businesses for many years prior to the Relationship, as well as during and after it. He made management decisions for the Companies on a daily basis. I also accept that the claimant did not engage with the Companies other than on uncommon and select occasions, for example Flood-Related Contracts and the renovations of 150 Commercial Place. I am persuaded that some of her perceived contributions did more harm than good.
- [164] Determining whether an equal division of family property or the increased value of excluded property would be significantly unfair under s. 95 of the FLA requires an examination of each case's unique facts. Much of the evidence at trial centred on the parties' differing versions of their respective contributions to the Companies.
- [165] It is settled law that the only relevant factors for determining significant unfairness are those set out in s. 95(2) of the FLA, and that the Court should only undertake an accounting of each party's relative contributions in very limited circumstances: *Banh* at paras. 30, 32. Judicial discretion to order unequal division of family property is constrained. The exercise of this discretion must be based on persuasive economic factors that lead to significant

unfairness as that term has been defined in the jurisprudence. The unfairness that might arise from equal division must be weighed against the legislature's objective of establishing a predictable regime for the division of family property. The extent of the court's discretion to depart from equal division under s. 95(2) is not based on a list of closed factors and does not eliminate all consideration of unequal contributions relevant to reapportionment. It is a high threshold that requires something "objectively unjust, unreasonable, or unfair in some important or substantial sense" and must be related to the economic characteristics of the relationship between the parties. One such consideration can be the party's contributions to the acquisition, preservation, maintenance or improvement of family property during the relationship: *Sperring v. Shutlak*, 2023 BCCA 54 at paras. 111-19.

[166] I will next assess the s. 95(2) factors and how they relate to the proper division of the increased value of the Companies' shares during the Relationship.

i. Duration of the Relationship: s. 95(2)(a)

[167] The parties agree that the Relationship lasted for slightly over five years, from May 15, 2015 to July 6, 2020, the day the claimant filed the Notice of Family Claim. After Separation, they made unsuccessful attempts at reconciliation. They travelled to Whistler and Banff together and the respondent enlisted the claimant to help organize the renovation of the Manufactured Home in anticipation of its sale. The respondent offered to pay a portion of the claimant's significant dental costs in return.

[168] The claimant argues that a five-year relationship is not so short as to justify unequal division of family property on the basis of significant unfairness. She refers to the Court of Appeal's decision in *Banh* at para. 64, where the court determined that the two-year duration of a marriage alone was not enough to justify disentitling a spouse from post-separation growth in property values.

[169] Although in this case the Relationship lasted five years in elapsed time, it was, unlike the relationship in *Bahn*, far from smooth sailing for either party. It was a rocky relationship almost from the outset, with multiple extended periods of separation. By my assessment, the Relationship was not destined to be long-term. The parties each had children from prior relationships and there is no evidence that they intended to have children together. There was little to no commingling of finances in the Relationship. They opened no joint lines of credit nor had any joint debts. The respondent paid most household expenses. They briefly opened a joint bank account together and the Apex Townhouse was the only jointly-owned property. They discussed future plans together, but never reached a consensus on what those plans entailed, especially given the conflicts, periods of estrangement and lack of trust between them.

[170] I conclude that the Relationship was mired in uncertainty, and appears to have been tentative rather than steady and permanent. While little weight can be given to this, the lack of trust exhibited in particular by the claimant sheds some light on the parties' inability to agree on how they were going to manage matters going forward. Their actions and conduct show that they considered their relationship to be unstable and temporary with a lack of commitment towards one another.

[171] Thus, in my view, while the relatively short duration of the Relationship alone is not sufficient to warrant unequal division, it remains a relevant consideration especially when viewed in the context of the relationship's general tenor. It works in favour of unequal division of the Companies' increased share values.

ii. Terms of any agreement between the parties: s. 95(2)(b)

[172] The claimant contends that she and the respondent agreed to combine their property and efforts into a form of joint family venture, the objects of which were to accumulate assets, grow the businesses and ultimately retire with financial security for themselves and the Children.

[173] While I accept that the parties discussed plans to accumulate assets together, I conclude that the claimant and respondent never agreed on how best to accomplish it. My assessment is that the claimant was forcing the issue of formalizing her ownership in the Companies onto the very reluctant respondent. I also conclude that, because of the instability of the Relationship, the respondent did not want to give up ownership to the claimant. He met with accountants and financial advisors to appease her. The parties never reached an agreement or finalized anything because the respondent was unwilling to proceed due to his concerns about the volatility in the Relationship.

[174] Accordingly, this is a neutral factor.

iii. The claimant's contribution to the respondent's career: s. 95(2)(c)

[175] The claimant asserts that she contributed to the respondent's career success by:

- a) encouraging him to be professional in the way he approached and represented himself in business;
- b) discouraging his alcohol and drug consumption;
- c) discussing business matters with the respondent on an almost daily basis;
- d) initiating and promoting the expansion of Superior Septic's business into lucrative fence rentals; and
- e) handling the interior design and completion of 150 Commercial Place, thereby improving the Companies' image.

[176] In support, she points to the respondent's references to her as a "king maker" and the two of them as a "power couple".

[177] I am not persuaded that the claimant's efforts contributed to the respondent's career, as that phrase is meant in s. 95(2)(c). Firstly, I have already concluded that the claimant has exaggerated her contributions to the respondent's businesses. While I am satisfied that she assisted the respondent from time to time, it was not to the degree she suggests and did not result in all the positive changes she suggests. Indeed, some of her involvement proved negative and disruptive to the Companies' staff.

[178] I conclude that this, too, is a neutral factor.

iv. Whether the respondent, after Separation, caused a significant increase beyond market trends in the value of the Companies' shares: s. 95(2)(f)

[179] In order for this subsection to apply in the significant unfairness analysis, the increase in value beyond market trends must have occurred after Separation and must have been caused by the respondent.

[180] While the parties did not obtain an additional business valuation after May 31, 2022, the available evidence shows a significant increase in Trademark's corporate revenue, which increased by some \$500,000 and \$300,000 in 2021 and 2022, respectively, over 2020. Superior Septic's revenue was over \$1-million higher in 2022 than in 2020. Both companies thus had substantially higher revenues after Separation than during the Relationship.

[181] I conclude that, to a large degree, the respondent's post-Separation contributions to the Companies accounted for these revenue increases. After Separation, he continued to diligently work long hours to improve the Companies' fortunes. All witnesses confirmed that he is an exceptionally hard worker who continually sought out new opportunities, for example by purchasing Darlorn over the claimant's objections. I accept that the respondent's good reputation, longstanding relationships and connections in the community resulted in the Companies' performance post-Separation.

[182] This case is distinguishable from *Banh*, which concerned the increase in value of real estate holdings only. Further, the increase in the value of Mr. *Banh*'s real estate holdings post-separation was entirely market driven: paras. 45-50. The properties required minimal management. Mr. *Bahn* was a pharmacist who had purchased real estate as a side-gig and essentially had a hands-off approach.

[183] Here, a significant part of Trademark and Superior Septic's growth post-Separation was due to the respondent's efforts and strategic management. Less than one-half of the increase in the Companies' value can be attributed to the market-driven growth in real estate holdings. Further, 086 Ltd.'s purchase of the Apartment Block could not have been accomplished without the respondent's relationship with Mr. Martin. 086 Ltd. took on all liability for the Apartment Block and paid for the significant repairs that were required. Similarly, the respondent's resources and relationship with the Bank of Montreal allowed for 150

Commercial Place's expansion. 086 Ltd. took on all risk and liability and Trademark covered the costs.

- [184] Nevertheless, it is undeniable that market trends were responsible for a large portion of the increase in 086 Ltd.'s value after Separation. The value of its real estate holdings increased along with property values generally.
- [185] Banh stands for the proposition that a party's post-Separation contributions may only be considered under s. 95(2) where they are "so large, onerous and unaccounted for as to make it significantly unfair to equally divide the family property at the time of trial": para. 40. I conclude that in this case, the respondent's contributions were all of those things. The post-Separation increases in the values of the Companies are attributable to a substantial degree to the efforts of the respondent, as well as to the increased real estate market.
- [186] Accordingly, this factor militates in favour of an unequal division.
- v. 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: s. 95(2)(h)
- [187] Mr. Sanders' report sets out the taxes that the Companies and respondent could reasonably expect to pay on the sale of the Apartment Block and the Oasis Condo purchase contract.
- [188] According to Mr. Sanders, the corporate and personal taxes on the sale of the Apartment Block, assuming a sale of \$1.5 million, will be approximately \$60,000 and \$230,000, respectively. The sale of the Oasis Condo Purchase Contract is complete and will result in corporate and personal taxes of approximately \$9,000 and \$15,000, respectively.
- [189] This factor favours an unequal division in the respondent's favour.
- vi. Any other factor that may lead to significant unfairness: s. 95(2)(i)
- [190] The fact is that the respondent owned two thriving and growing businesses for many years before the Relationship. I conclude that the Companies would have continued growing regardless of the Relationship, for a number of reasons including the respondent's business acumen, reputation and lack of competition. As a result of meeting the respondent and the Relationship beginning, the claimant in effect "hitched her wagon" to already successful and growing enterprises that the respondent had spent years developing.
- [191] On the one hand, the claimant did make direct and indirect contributions to the Companies over the five-year Relationship, as I have discussed. It would not be fair for her not to share in the increased growth of the Companies over that time. However, on the other hand, it was the respondent who started and built up the Companies for years prior to the Relationship and it would be unfair to him for the claimant to step in mid-way and equally reap benefits that she played little role in creating.

[192] Additionally, the evidence amply satisfies me that the respondent's financial contributions during the Relationship were woefully disproportionate to those of the claimant. These contributions include:

- a) paying \$91,000 towards the purchase of the Apex Chalet compared to the claimant's contribution of \$25,000;
- b) paying the vast majority of living and other expenses during the Relationship, with the claimant's only regular expense being the monthly mortgage payments on the Lower Bench Rd Home;
- c) the claimant receiving all rental income from the newly renovated and updated Apex Cabin during the Relationship, which she did not declare for tax purposes;
- d) the claimant receiving all rental income from the Apex Townhouse post-Separation, also undeclared;
- e) the claimant having full and unrestricted use of the Airbnb account from the Uplands Ct Home during the Relationship, the renovation of which was paid for entirely by the respondent and Trademark;
- f) the respondent and Trademark funding the cost of significant renovations of the Lower Bench Rd Home and its back yard; and
- g) the claimant at no time bearing any personal liability related to the Companies, Apex Chalet and Apex Townhouse, while the respondent bore all the risk and liability associated with the Companies.

[193] I accept that disproportionate contributions during the Relationship are not to be considered unless they are "marked, prolonged, and intentional or unexplained disparities in contribution to family burdens": *Khan v. Gilbert*, 2019 BCCA 80 at para. 32. However, the respondent's contributions coupled with what I consider to be significantly disproportionate resources brought both during and after the Relationship are factors that can be considered in determining whether he has met the threshold of establishing that it would be significantly unfair to divide all family property equally. These factors all relate to the economic characteristics of the Relationship and can be considered under s. 95(2)(i).

[194] In my view, this is a significant factor that weighs heavily in favor of reapportioning the increased value of the shares in the respondent's favour.

vii. Conclusion on significant unfairness

[195] This is a case where the respondent brought significant excluded assets with growth potential into a tumultuous and relatively short relationship: *Li v. Liang*, 2021 BCSC 862 at para. 217.

- [196] The jurisprudence defines the term "significant unfairness" to mean such things as "extensive or important enough to merit attention" and "weighty, meaningful or compelling". The unfairness must be compelling or meaningful having regard to the s. 95(2) factors: *Remmem v. Remmem*, 2014 BCSC 1552 at para. 44.
- [197] Proving significant unfairness is a fact-driven process. It depends on each case's unique facts and must reach a high bar. I have concluded that the respondent has met that bar and shown that it would be substantially unfair to equally divide the increase in the share values of the Companies during the Relationship. 086 Ltd. had already acquired 150 Commercial Place and Trademark was operating as a going concern prior to the Relationship. Trademark had built up momentum by the time the Relationship began, with valuations approaching \$1.3-million.
- [198] In weighing the above factors, I conclude that an equal division would be significantly unfair. I have considered the relatively short duration and volatility of the Relationship, the Companies' momentum and the respondent's reputation, and balanced them against what I have determined to have been minimal contributions by the claimant to the Companies' growth and success. While I conclude that the claimant is entitled to share in the increase in value of the Companies during the Relationship, her share should be less than one-half. Considering all the circumstances, I find the fairest solution is, save to the equity in the Apartment Block owned by 086 Ltd., to divide the increased value of the Companies' shares during the Relationship 25%-75% in the respondent's favour. The exception to this, as will be discussed below, is the equity in the Apartment Block, currently owned by 086 Ltd., which is to be divided equally.
- [199] Having determined that the Companies' shares must be apportioned unequally, I will now make some specific comments concerning the other assets owned by the parties, both corporately and personally.

E. 150 Commercial Place - Owned by 086 Ltd.

- [200] In 2009, the respondent purchased 150 Commercial Place through 086 Ltd. for the purpose of operating the Trademark and Superior Septic businesses. As at May 2015, the building's value was between \$460,000 and \$510,000. As at May 31, 2022, its appraised value was between \$1.23-million and \$1.33-million.
- [201] In 2017 to 2018, the respondent initiated a significant expansion to 150 Commercial Place that essentially doubled its available space. The process started in 2014 to 2015, prior to the Relationship. Loans from BMO funded the cost of the expansion and renovations. Trademark staff provided most of the labour and materials. The respondent contributed no personal funds into the expansion project but oversaw the work, hired subtrades and supervised Trademark's labour forces as required.

- [202] I accept that the claimant contributed to the project by providing some interior design ideas and overseeing the office interior design, during which she spent approximately four months on-site part-time directing trades, sourcing materials, laying out designs and finishing interiors. The respondent appreciated her contributions and thanked her for them.
- [203] I also accept that the significant increase in value of 150 Commercial Place during the Relationship was in part due to the increased real estate market and in part due to the increased value resulting from the renovations to the building.

F. The 755 Robinson Ave Home and the Carver Boat

- [204] The respondent purchased the Robinson Ave Home in 2009 for \$315,000. He sold it on November 9, 2016, for \$405,000 and received net proceeds of \$154,293.65, which were deposited into his own bank account.
- [205] On April 25, 2017, he purchased the Carver Boat for \$65,000 using the proceeds of the sale of the Robinson Ave Home to do so. The respondent had previously owned a boat in partnership with two other couples, but decided to purchase his own after he could not always use it when he wanted. As there was initially no slip available at the Penticton Yacht Club, he waited for one to become available before deciding to purchase the Carver Boat.
- [206] The claimant contributed no funds towards its purchase. The claimant acknowledges that the funds used to purchase the Carver Boat were excluded assets, but argues that the respondent intended to gift her a one-half interest at the time and that he cannot now change his mind.
- [207] The claimant relies on the fact that, at first, the Carver Boat's vendor put the bill of sale in both her and the respondent's names. I conclude that this occurred at the claimant's insistence, and that the respondent intended the boat to be his alone. The couple were fighting at the time and the respondent complied with her demand in order to appease her. Approximately one month later, the respondent arranged for the vendor to replace the original bill of sale in both names with a bill of sale in his name only. The boat's insurance was also originally in the respondent's sole name, but the claimant unilaterally arranged for the insurance broker to place it in both names.
- [208] The fact that the bill of sale was changed shortly after the Carver Boat's purchase is strong evidence that the respondent had no intention of gifting an interest in it to the claimant. The evidence is that the parties intended to use the Carver Boat together personally, recreationally and to entertain the respondent's corporate clients. However, shared use is not relevant to whether or not the respondent held an intention to gift.
- [209] Since Separation, the respondent has retained possession of the Carver Boat and has paid the associated expenses, which he estimates at around \$10,000 annually.

[210] The party alleging a gift has the onus of proving it. The evidence is clear and I accept that the funds used to purchase the Carver Boat came from the proceeds of the sale of the Robinson Ave Home, an excluded asset. At the time of its purchase, the parties were fighting. I am not persuaded that the claimant has met the burden of showing that the respondent intended to gift a one-half interest in the Carver Boat to her. I conclude that it is an excluded asset owned solely by the respondent.

G. The Lower Bench Rd Home

[211] The Lower Bench Rd Home has been registered in the claimant and Mr. Gibson's names since before the Relationship began. Renovations initiated by the claimant and Mr. Gibson were not complete when the respondent moved in. Almost every room needed something done. The respondent and his older brother performed and completed many of the required renovations, some minor and some major. The respondent also undertook a major renovation of the outside pool and patio areas, using Trademark's labour and materials to do so. The outdoor renovations included the construction of an outdoor kitchen area, fireplace pergola and dining area. These renovations significantly improved the home and increased its value.

H. The Uplands Ct Home

[212] The respondent bought the Uplands Ct Home in 2012 as his primary residence. The Uplands Ct Home was in foreclosure at the time and he was able to purchase it for \$380,000 with one hundred percent bank financing. The parties have agreed that, as at May 2015, its net equity was \$112,588, with a fair market value of \$460,000 and an outstanding mortgage balance of \$347,412.

[213] After the respondent moved in with the claimant in 2015, the parties staged the Uplands Ct Home with a combination of their furniture and rented it on the VRBO platform. The claimant managed and controlled the rentals.

I. The Manufactured Home

[214] The Manufactured Home consisted of two single-wide homes joined together. The respondent purchased it in 2004 for his mother to use as her Penticton home. The respondent claims that he gifted the home to his mother and retained no beneficial interest in it. He maintains that he always intended for his mother to own the Manufactured Home in its entirety. He points out that although he paid for its purchase, his mother never paid him rent but paid all associated expenses and minor repairs. He says that his mother was free to decorate and change the home to her liking without consulting with him. He also points to a trust declaration dated July 6, 2015, signed by his mother stating that he would be entitled to the full beneficial ownership of the Manufactured Home on her death. The respondent maintains that the trust declaration was prepared to allay any issue with his siblings claiming an interest in the Manufactured Home on his mother's passing. He says

that such a declaration would not have been unnecessary if he owned it. In addition, he points to a promissory note in his mother's favour that he says evidences his mother's loan of the sale proceeds of the Manufactured Home to him. In short, he says the Manufacture Home belonged to his mother and she agreed to lend him the net sale proceeds of its sale shortly before she died. Regardless, he says that he would have inherited the Manufactured Home on his mother's passing because he was the one who gifted it to her. Accordingly, he claims it is an excluded asset.

- [215] It is noteworthy that the Manufactured Home was listed as an asset owned by the respondent in the 2008 separation agreement with Ms. Ivandic.
- [216] The claimant claims an interest in the net sale proceeds of the Manufactured Home on the basis that it is family property. She says that throughout the Relationship, the respondent always referred to it as belonging to him. She points to the renovations she did while his mother lived there and to ready it for sale after Separation. The claimant says that the Manufactured Home's increased value during the Relationship is family property.
- [217] As at May 1, 2015, the parties agree that the Manufactured Home's fair market value was \$25,000.
- [218] It is clear that the respondent's mother lived in the Manufactured Home until fall 2021, when her failing health required her to move to Nanaimo to be cared for by the respondent's sister. She passed away on December 24, 2021.
- [219] On November 5, 2021, the respondent sold the Manufactured Home for \$112,000, after his mother moved out. The increase in equity during the Relationship is therefore \$87,000. The respondent says that his mother agreed to lend him the net sale proceeds and points to a promissory note for \$107,605.30 dated November 5, 2021, which he says evidences the loan. He claims that he still owes that money to his mother's estate.
- [220] I reject the respondent's evidence on this point. I conclude that the respondent was always the beneficial owner of the Manufactured Home, which was never truly owned by his mother. He simply allowed her to live in it rent-free for as long as she liked. I conclude that the promissory note was an attempt to create a non-existent loan for the purposes of this litigation.
- [221] The respondent sold the Manufactured Home despite his knowledge of the Restraining Order and the claimant's asserted claim to it. The respondent's explanation for selling the Manufactured Home in face of the Restraining Order was weak and I reject it.
- [222] The respondent has not persuaded me that the Manufactured Home should be excluded. Accordingly, its increased value during the Relationship must be divided equally in accordance with s. 85 of the FLA.

J. The Apex Cabin

- [223] The respondent purchased Mr. Gibson's one-half interest in the Apex Cabin for \$80,000 in 2015. The respondent borrowed against the equity in the Uplands Ct Home to facilitate the purchase. Closing was delayed until September 2015 to allow the respondent to secure the funds. The parties agree that Mr. Gibson accepted \$80,000 for his interest even though it was worth \$100,000.
- [224] The parties then undertook extensive renovations that increased its size by approximately one-third. While the claimant was involved in the design and other work, Trademark provided labour, trades and materials to the extent they were required. I conclude that the claimant attempted to maximize her involvement in the renovations and minimize that of the respondent and Trademark.
- [225] The parties' original intention was for the Apex Cabin to be for personal use, but they ultimately purchased the Apex Chalet not long after renovations finished. They rented the Apex Cabin, with the claimant managing the rentals and receiving all the rental income. The respondent never asked her to account for those funds.

K. The Apex Townhouse

- [226] In July 2017, the parties purchased a townhouse at Apex Mountain for \$185,000 to be used as a rental investment. The claimant used the equity in the home she bought from her parents near Winnipeg and the respondent used equity in the Uplands Ct Home. After purchase, the parties undertook a number of renovations and upgrades, with the claimant doing the interior design and Trademark supplying the labour and materials.
- [227] Similar to the Apex Cabin, the claimant managed the Apex Townhouse rentals and collected the rental income. Again, the respondent did not require her to account for this income. Meanwhile, Trademark paid for any required maintenance or repairs.
- [228] The Apex Townhouse was sold on November 21, 2021, with the net sale proceeds divided equally.

L. The Apex Chalet

- [229] In August 2018, the parties purchased the Apex Chalet for \$525,000, intending to use it as a family retreat. It was registered in the respondent's name, but on August 10, 2018, he executed a declaration of title and beneficial ownership that confirmed he held 50 percent of it in trust for the claimant.
- [230] Royal Bank of Canada mortgage financing funded most of the purchase price of \$420,000. The claimant paid \$25,000 towards the down payment and the respondent paid the \$90,713.04 required to complete the purchase.

- [231] The Apex Chalet was reserved for the parties' personal use and was never rented. During the parties' frequent fights or occasional periods of estrangement, the respondent would typically stay at the Apex Chalet. Following Separation, the Apex Chalet became the respondent's principal residence until January 2022, when he moved into the Uplands Ct Home. The respondent could have moved into the Uplands Ct Home earlier, but chose to rent it out instead.
- [232] The parties agree that the Apex Chalet is family property in which they each have a one-half interest. Both parties seek an order giving them exclusive ownership of the Apex Chalet. Neither wants it sold. The respondent considers it his home because he lived in it from Separation through January 2022. Further, he says his parents' ashes are buried there.
- [233] If the Apex Chalet was sold, capital gains taxes would be payable. If it was transferred from either party to the other as part of the distribution of family property, no taxes would be payable.
- [234] Given how passionate each party feels about keeping the Apex Chalet, I have decided that each will have the option to buy out the other party's one-half interest by making the other an offer in the form of a sealed bid. Within 30 days of receipt of these reasons (or such other time as the parties may agree), each party is to file a sealed envelope with the Court containing an offer to purchase the other party's interest. They are each to put their best foot forward. The Court will open the sealed envelopes upon receipt and determine which party will buy out the other and on what terms.

M. The Apartment Block

- [235] At various times between spring 2017 and spring 2018, the parties searched for real estate investment opportunities. In March 2018, they purchased the Apartment Block for \$895,000. They initially discussed purchasing it through a holding company they would incorporate and own equally. Instead, 086 Ltd. purchased it. Its purchase was funded by a down payment of \$150,000 borrowed from the respondent's friend Mr. Martin, with the balance by way of a mortgage of approximately \$747,000.00. Neither party contributed any personal funds.
- [236] I conclude that the parties intended to own the Apartment Block equally. 086 Ltd. purchased it out of convenience because a new corporation would delay funding.
- [237] During the trial, the parties advised that the Apartment Block had a pending contract of sale for \$1.6-million with a planned completion date in June 2023. The sale was expected to realize net sale proceeds of approximately \$905,000 after payment of encumbrances. Unfortunately, that sale collapsed mid-trial and the Apartment Block has been relisted. The respondent's current partner, Ms. Radcliffe, a realtor, is the listing real estate agent and it is expected that she will share in commissions when a sale is eventually completed.

- [238] The respondent seeks leave to reopen his case with further evidence on the sale of the Apartment Block if a firm contract of sale is reached relatively soon. If not, he is content to accept the current appraised valued of \$1.5-million as its fair market value.
- [239] The equity in the Apartment Block, net of taxes as discussed below, is to be divided equally between the parties and deducted from 086 Ltd.'s share valuation prior to determining the 25-75 share valuation in the respondent's favour.

N. The Oasis Condo Property

- [240] In September 2020, some two months after Separation, the respondent learned of a lakeside condominium development and marina in Summerland to be known as the Oasis Development. The respondent was asked to view the project with a view to constructing the marina. Despite being separated, the parties viewed the development together on one occasion and the respondent became interested in purchasing one of the units either for personal or business use.
- [241] The respondent had additional meetings with the developer and decided to purchase a unit ("Oasis Property"). The purchase price was \$1,499,000 and 086 Ltd. was the named purchaser. The respondent borrowed the initial deposit of \$150,000 from Mr. Martin ("Oasis Property Loan") and Trademark paid the balance of the down payment of \$341,670 in two installments ("Trademark Installments").
- [242] On March 5, 2023, 086 Ltd. assigned its interest in the Oasis Property purchase contract to a third-party purchaser for \$1.73-million, the net effect of which was that 086 Ltd. received \$517,196.30 net sale proceeds, which was placed in trust. Ms. Radcliffe was the listing sales agent and received \$60,550, equal to one-half of the real estate commissions.
- [243] On May 28, 2023, during the trial, I ordered that \$150,000 of the funds in trust be repaid to Mr. Martin and that \$200,000 of the remaining funds in trust be paid to Trademark. The balance remains in trust pending this decision.
- [244] The respondent argues that the Oasis Property is excluded property because he purchased it after Separation without using family property. I note that Trademark invested a substantial amount of funds into the purchase. I have already concluded that the claimant is entitled to an interest in Trademark's increased value during the Relationship. Accordingly, family property was indirectly used to purchase the Oasis Property. Subject to distributive taxes, the claimant is entitled to a one-half interest in the net sale proceeds, net of the Oasis Property Loan and Trademark Installments. In other words, she is entitled to one-half of the net profits from the sale of the Oasis Property.

O. Bank Accounts

[245] The parties set up a joint BMO account to receive VRBO rental income. Otherwise, they maintained separate bank accounts throughout the Relationship. They used the joint account for general household expenses. Neither tracked the expenses and neither seeks to have the other account for any funds in any bank accounts.

P. BMO Mastercard Travel Points

[246] The respondent uses his BMO Mastercard for business. As at November 2020, he had accumulated a balance of 249,639 travel points on the card. The claimant seeks to have the points accumulated during the Relationship split equally. The respondent does not seriously challenge the claimant's position.

[247] The claimant will be entitled to a one-half share of the BMO Mastercard points accumulated during the Relationship, less any that may have been cashed in during the Relationship.

Q. Industrial Alliance Insurance Policy

[248] In September and November 2021, the respondent cashed in a \$2-million Industrial Alliance universal life policy that he took out in 2017. He owned the policy personally, and the claimant was initially the named beneficiary.

[249] On April 13, 2021, the respondent named TDB Holdings Ltd. ("TBD Ltd.") as its beneficiary. He had incorporated TDB Ltd. in late 2020 as a holding company for financial and estate planning. TDB Ltd. received the cash surrender value of \$45,969.02. From those proceeds, the respondent paid \$31,000 in outstanding support owed to his ex-wife through FMEP and \$6,000 to Mr. Martin for outstanding interest on the Oasis Property Loan.

[250] The transaction occurred while the Restraining Order was in effect. The respondent explained he thought he could cash in the policy because: i) the Restraining Order only applied to real property or other hard assets; and ii) he was able to secure replacement insurance with far cheaper premiums.

[251] There is no doubt that the cash surrender value of the policy is family property. The respondent must account to the claimant for one-half of it, namely \$22,984.51.

R. Distributive Taxes

[252] The parties disagree on whether distributive taxes ought to apply in the division of family property. The respondent says that the value of the Companies' shares must be discounted to account for distributive taxes in order to ensure equality of treatment, relying on *Sanai v. Mahmoud*, 2017 BCCA 155 and *Baryla v. Baryla*, 2019 BCCA 22. The claimant disagrees and says that distributive taxes ought not be considered.

- [253] Section 97 of the FLA provides that corporate and distributive taxes may be considered where a division of family property will attract tax consequences: *D.Z. v. M.Z.*, 2022 BCSC 706 at para. 161, citing *Sanai and Jaszczewska*.
- [254] The respondent relies on an estimate of distributive taxes set out in Mr. Sanders' report. In preparing his report, Mr. Sanders assumed that all the assets and undertakings of the Companies, or alternatively all shares of the Companies, would be sold and all proceeds received by the respondent in the year of the sale.
- [255] The claimant argues that it would be improper to discount values to account for speculative taxes, because it is not known when the assets or shares will be sold, if ever: *Ouellette v. Ouellette*, 2012 BCCA 145 at paras. 27-31. She points to the respondent's evidence that he has no intention of selling the businesses operated by Trademark or Superior Septic. Indeed, she points to Superior Septic's recent court-approved purchase of a competitor for \$1.5-million.
- [256] In *Maguire v. Maguire*, 2016 BCCA 431 at para. 38, the Court of Appeal held that distributive taxes should only be considered in appropriate cases, namely where there is evidence that the division of family property will attract tax consequences. Where the evidence is unclear as to the amount of exigible taxes, the court need not make an allowance for such taxes.
- [257] More recently, the Court of Appeal in *Sanai* found it was an error not to account for distributive taxes in certain circumstances. In *Sanai*, the corporations in question were holding or personal service companies rather than going concerns, there was evidence of the scale of tax liability, and the appellant was willing to move the wealth out from behind the corporate curtain immediately: *Sanai* at para. 34.
- [258] In *Sea v. He*, 2022 BCSC 2169, Justice Adair applied the law as follows:
- [155] There is no absolute rule concerning whether tax consequences should or should not be taken into account in the division of family assets. Corporate and distributive taxes can and should be taken into account in the division of property in appropriate cases. Where there is evidence that a division of family assets will attract tax consequences, an allowance should be made for tax. Where it is not clear when or in what amount taxes will be exigible, an allowance may not be made. See *Maguire v. Maguire*, 2016 BCCA 431, at paras. 38-39.
- ...
- [157] In this case, the tax implications and tax consequences respecting *Diversified* are, at best, speculative. There was no evidence that Mr. Sea intended to sell *Diversified* (or his interest in *Diversified*), whether in a share sale or an asset sale. The Scott Schedules provided in closing submissions did not show that, assuming Mr. Sea would be required to make a compensation payment to Ms. He, he would need to liquidate his interest in *Diversified* to do that. Mr. Sea was not asked about the matter during his evidence at trial. Rather, the inference I draw from Mr. Sea's evidence is that he intends for *Diversified* to continue as a

going concern, and is training Mr. Nelson to take over running the business once Mr. Sea fully retires. The value in Diversified comes from its income-earning power, rather than through liquidation of its assets and winding up the company. These facts make this case distinguishable from *Sanai v. Mahmoud*, where the companies at issue were holding companies.

- [259] Here, it is unknown if the respondent will need to liquidate his business interests in order to make a compensation payment. However, he is in the process of selling the Apartment Block and has already sold the Oasis Property. The sale of both will have tax consequences.
- [260] Respecting the Oasis Property, the net sale proceeds were \$517,196.30. I ordered that \$350,000 of those proceeds be released to the respondent to be used as noted above. The remaining \$167,196.30 is held in trust. According to Mr. Sanders' report, the tax liability from the sale will be \$24,000.
- [261] The sale of the Apartment Block collapsed during the trial and the property has been put back on the market. The Apartment Block was appraised at \$1.5-million in January 2022. There is no sale pending although it is actively being marketed. According to Mr. Sanders, if it sells at the appraised value of \$1.5-million, the combined personal and corporate taxes on the sale will be \$286,000.
- [262] Ms. Radcliffe brokered the sale of the Oasis Property contract and received a commission of approximately \$30,000. As noted, she is also the listing agent for the Apartment Block and will receive commissions of approximately the same amount on its sale. The claimant argues that I should consider the fact that this additional \$60,000 will be brought into the respondent's household in any reduction for distributive taxes.
- [263] I disagree. First, such commissions are not family property under the FLA. They are not income in the respondent's hands. I have no evidence of the living or financial arrangements between the respondent and Ms. Radcliffe, nor do I know what taxes Ms. Radcliffe will be required to pay. In my view, any such consideration would set a dangerous precedent for future cases.
- [264] I conclude that it is appropriate to consider certain distributive taxes in valuing the shares of the Companies. Accordingly, the valuation of 086 Ltd. will be discounted by \$310,000, in total, for distributive taxes, namely \$286,000 respecting the Apartment Block and \$24,000 respecting the Oasis Property.

XIII. SPOUSAL AND CHILD SUPPORT

A. Relevant Legal Principles

- [265] The legal principles relevant to the spousal and child support issues are set out in the FLA as follows:

161 In determining entitlement to spousal support, the parties to an agreement or the court must consider the following objectives:

- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
- (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
- (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
- (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.

[266] Subsections 147(4) and (5) of the FLA set out the circumstances in which a stepparent has a duty to provide for a child:

147 (4) A child's stepparent does not have a duty to provide support for the child unless

- (a) the stepparent contributed to the support of the child for at least one year, and
 - (b) a proceeding for an order under this Part, against the stepparent, is started within one year after the date the stepparent last contributed to the support of the child.
- (5) If a stepparent has a duty to provide support for a child under subsection (4), the stepparent's duty
- (a) is secondary to that of the child's parents and guardians, and
 - (b) extends only as appropriate on consideration of
 - (i) the standard of living experienced by the child during the relationship between the stepparent and his or her spouse, and
 - (ii) the length of time during which the child lived with the stepparent.

B. Spousal Support

[267] The claimant seeks spousal support from the respondent from Separation until July 2025. The respondent says spousal support should end effective July 1, 2023. The claimant also seeks lump sum retroactive spousal support on the basis that the respondent should have been paying more than provided for in the Davies Order.

[268] The respondent argues that the claimant's entitlement to spousal support is on a non-compensatory basis only. He argues on the basis of the s. 161 factors, including the short length of the relationship, that she is entitled only to short-term transitional support. After accounting for interim spousal support since the Davies Order and his payment of joint post-Separation expenses, he says spousal support should cease effective July 1, 2023.

- [269] The claimant currently receives spousal support of \$4,274 per month from the respondent pursuant to the Davies Order. The respondent did not make formal payments of spousal support to the claimant between the dates of Separation and the Davies Order. She also receives \$1,250 per month in spousal support from Mr. Gibson.
- [270] The claimant has been officially unemployed and in receipt of long-term disability benefits since long before the Relationship and continued to receive those benefits during the Relationship. Her current income consists of CPP disability benefits of \$1,395 per month (\$16,740 per year) and support payments from Mr. Gibson of \$1,250 per month (\$15,000 per year). In addition, she receives support payments from the respondent pursuant to the Davies Order of \$4,275 per month (\$51,300 per year).
- [271] The claimant voluntarily elected to take a lump-sum buyout of her Air Canada pension. She chose this over the alternative option of receiving \$1,676 per month (\$20,112 per year). She invested the lump-sum payout and plans to use it for retirement. It is reasonable to add to her income the sum of \$20,112 per year which is what she would be receiving but for her decision to accept the buyout. As such, the claimant's annual income exclusive of the spousal support payments the respondent is currently making is \$51,852 (\$16,740 + \$15,000 + \$20,112).
- [272] She remains on disability and claims other medical issues related to the May 2018 incident, but does host concerts and backyard parties at her home for up to 50 paying attendees. She runs, hikes, walks and seemingly engages in various other normal activities.
- [273] The determination of both parties' incomes was hotly contested. The respondent says that the claimant is capable of earning income in various forms and simply chooses not to. He seeks to have income imputed to her.
- [274] The claimant contends that the respondent is artificially reducing his income. Because he is the sole owner and controlling mind of the Companies, which pay most of his day-to-day and discretionary expenses, it is unclear what income should be attributed to him. Although he says the Companies allocate his personal expenses to him at the end of each year, the accounting is not transparent.
- [275] In the end, I am satisfied that the claimant is and remains multi-talented including most notably her self-professed talent for interior design that was a major part of her evidence respecting her contributions during the Relationship. She is skilled in interior design and professed her talents during the trial. Despite having marketable skills, the claimant has not sought to use them or work since Separation. I find that she functions at a high level and could easily work either for herself or others if she chose to do so. I conclude that the claimant is intentionally unemployed, her anxiety issues notwithstanding.

- [276] I must impute income to her in accordance with s. 19(1)(a) of the Guidelines. She has not complied with her obligation to seek self-sufficiency, a requirement of s. 161(d) of the FLA. I agree with the respondent's suggestion that \$40,000 per annum income should be imputed to her, in addition to the support income she presently receives.
- [277] Mr. Gibson testified that he will pay spousal support to her as long as it is needed. Given Mr. Gibson's lack of disclosure, whether the amount he is paying in spousal support fits within the Guidelines is unclear at best. The claimant agrees that despite her understanding that Mr. Gibson earns approximately \$120,000 per year, she has never asked him to disclose his annual income tax information nor sought spousal support in accordance with the Guidelines.
- [278] The claimant still owns the Lower Bench Rd Home, which has a separate rental suite and a carriage house also suitable for rental. The claimant has taken no steps to do so since Separation, despite her experience running VRBO and rental units during the Relationship and despite her testimony that renting various properties was the parties' retirement plan.
- [279] For example, during the summer of 2016 while the respondent was living in a trailer, the claimant rented out the Lower Bench Rd Home for two weeks and generated between \$3,500 and \$5,000.
- [280] The claimant swore a F8 Financial Statement on March 28, 2023, which I conclude suggests artificially low income and inflated expenses. For example, when confronted with a \$600 per month expense for clothing, she replied that "I like quality clothing". She implied that everything she buys is of high quality and expensive. She could not back up or justify many of the expenses she claimed.
- [281] Ultimately, I have no faith that her claimed income and expenses are reliable.
- [282] I find that the claimant's income for support purposes should be imputed at \$91,852 per year since Separation, made up of \$51,852 she is receiving from CPP, Mr. Gibson and what she would have received from Air Canada had she not cashed in her pension plus \$40,000 in income I have imputed to her that she could be earning had she chosen to do.
- [283] For his part, the respondent has always run all his personal expenses through Trademark. He uses corporate credit cards for personal expenses and his accountants account for those expenses at the end of the year. The F8 Financial Statement that he filed on March 29, 2023, shows his Guideline income to be \$278,197.
- [284] Because the respondent's income fluctuates widely from year to year, I conclude that the best and most equitable method to determine his income for support purposes is to take an average-cash-flow-based approach because it takes into account the business realities of the Companies, including capital purchases and debt financing. The respondent argues, and I accept, that not all pre-tax corporate income is available for support purposes because the Companies are required to make significant capital purchases and repairs of equipment and vehicles on a yearly, but fluctuating basis. The Companies rely on their

equipment to earn income and these expenses are necessary for the continued growth and effective operation of the Companies: *Kowalewich v. Kowalewich*, 2001 BCCA 450 at para. 54; *Hausmann v. Klukas*, 2009 BCCA 32.

[285] I have reviewed and accept as correct the various charts and memory aids the respondent provided during submissions, which include summaries of the respondent's income from employment, dividends, investments, rentals and businesses from 2017 through 2022. The respondent's personal meal expenses paid by the Companies in that timeframe were also summarized. I have also reviewed the charts the respondent provided summarizing corporate income earned by Trademark, Superior Septic and 086 Ltd. for the same years, 2017 through 2022. Those charts are simply a summary of the corporate earnings set out in the evidence. Based on that evidence, the respondent's available income for support purposes is as follows:

a)

Three-year average 2020-2022:

\$138,000

b)

Six-year average 2017-2022:

\$176,000

c)

Excluding the best and worst years between 2017 and 2022:

\$220,000

[286] Determining the respondent's income for support purposes requires an assessment rather than a calculation. Using these figures as a guide, I conclude that his annual income for support purposes should be imputed at \$200,000 from the date of Separation through 2023.

[287] Respecting entitlement to spousal support, the respondent argues, and I agree, that the claimant has not proven entitlement on a compensatory basis. There is no evidence that she gave up any economic opportunity or outside employment as a result of the Relationship. She was unemployed and receiving disability income at the time the Relationship began and that did not change. There is also no persuasive evidence that the claimant conferred any economic advantage on the respondent during the Relationship. While there is no doubt that the claimant performed a domestic role at the Lower Bench Rd Home, the respondent was well established in his career prior to the Relationship and simply continued that career during the Relationship.

- [288] With no loss of educational or employment opportunities or disparity in standards of living following Separation, the claimant's assumption of the role of caregiver to the respondent's children every other week for part of the Relationship is not enough, in my view, to trigger an entitlement to compensatory spousal support.
- [289] Respecting non-compensatory or "needs-based" spousal support, the respondent rightfully concedes that the claimant is so entitled. However, he says that his spousal support obligations should end effective July 1, 2023, three years after Separation, because of the relatively brief Relationship. I agree with this submission. The respondent's final support payment will be on July 1, 2023, and his spousal support obligations thereafter shall cease.
- [290] I will leave it to the parties to calculate the respondent's spousal support obligations using the mid-range of the Spousal Support Advisory Guidelines, based on annual incomes of \$91,852 for the claimant and \$200,000 for the respondent. Should these calculations result in the respondent having overpaid or underpaid the claimant, the parties may set off the amount of such over- or underpayment against any other monies that may be owing according to these reasons. Should the parties be unable to agree, they may apply to have the issue resolved.

C. Child Support

- [291] The claimant seeks orders for child support for P.G. from Separation until P.G. is 19 years old on the basis that they were a blended family and the respondent supported P.G. for five years. The respondent disputes any obligation to pay child support for P.G. and that if any such obligation exists, it should terminate effective July 1, 2023.
- [292] The respondent's obligation for stepparent child support is limited under ss. 147(4) and (5) of the FLA. It is secondary to the obligations of the claimant and Mr. Gibson and extends only as appropriate on consideration of P.G.'s standard of living during the Relationship.
- [293] Throughout most of the Relationship, the claimant received child support from Mr. Gibson of \$1,000 per month, well below his obligations under the Federal Child Support Guidelines. Despite earning \$120,000 per year as a sales representative, he continues to pay the claimant only \$1,000 per month.
- [294] Pursuant to the Davies Order, the claimant also receives interim child support from the respondent in the amount of \$1,193 per month.
- [295] Despite being served with the March 10, 2022 court order adding him as a party to the proceedings, Mr. Gibson has not filed a response and taken little part in this proceeding. He filed a Form 8 Financial Disclosure on January 12, 2023, but never disclosed any documents to corroborate his stated income from 2016 onwards.

- [296] It is evident that Mr. Gibson has been remiss in paying his income taxes and filing tax returns. He is an active and dedicated parent who is deeply involved in P.G.'s life and funds many of her expenses. I accept the respondent's evidence that Mr. Gibson has always been a very good parent to P.G. and the respondent never needed to be involved in her parenting. The claimant and Mr. Gibson made all parenting decisions.
- [297] The parties have now been separated for three years. P.G. is now 17 and the claimant acknowledges that any support order will be of limited duration, but she seeks an order retroactive to Separation.
- [298] I conclude that the requirements of s. 147(4) of the FLA are met and therefore the respondent has a duty to provide support for P.G. secondary to the claimant's and Mr. Gibson's obligations. However, that obligation extends only as required on consideration of P.G.'s standard of living during the Relationship and its brief duration.
- [299] The "children-first" perspective of the Guidelines dictates that primacy should be given to P.G.'s standard of living: if P.G.'s standard of living during the Relationship was higher than what the claimant and Mr. Gibson can now provide her with, the respondent should pay support to provide that higher standard. The Court has a wide discretion, but must focus the inquiry on P.G.'s needs: *H.(U.V.) v. H.(M.W.)*, 2008 BCCA 177 at para. 41.
- [300] I am not persuaded that the Separation has negatively affected P.G.'s standard of living. P.G. continues to drive nice vehicles, reside in the same home and have use of the Apex Cabin. During the Relationship, the parties lived a comfortable, but not overly lavish lifestyle. They went to Mexico on one occasion with the Children and traveled to Vancouver on a few occasions. They skied at Apex Mountain during the winters.
- [301] The respondent did not exercise a parenting role over P.G. The claimant made it clear during the Relationship that all parenting decisions would be made by Mr. Gibson and herself. Accordingly, the respondent took a hands-off approach to P.G. Other than family outings, he was not involved in P.G.'s parenting and he spent very little time with her when the claimant was not also present. Their relationship ended at Separation.
- [302] I am not persuaded that the respondent has any obligation to pay stepparent child support to the claimant for P.G. He should not have been paying it since Separation. Firstly, Mr. Gibson should be paying the claimant more than \$1,000 per month. Secondly, the claimant has led no persuasive evidence that P.G.'s standard of living has suffered as a result of Separation.
- [303] Accordingly, the respondent is entitled to set off the amount of child support he has paid respecting P.G. pursuant to the Davies Order against any monies he may owe the claimant in accordance with this decision.

XIV. CONCLUSION

- [304] In sum, my orders are as follows:

Support

- [305] For the purposes of calculating spousal support payments, the claimant's income is set at \$91,852 annually from the date of Separation to current, and the respondent's income is set at \$200,000 annually for the same time frame.
- [306] Using these incomes, the parties are to calculate the amount of spousal support the respondent was obligated to pay the claimant from the date of Separation up to and including July 1, 2023, when his obligation to pay spousal support ended. The calculations of spousal support will be based on the mid-range of the Guidelines. The respondent will receive a credit for all interim spousal support payments made under the Davies Order. If there is any overpayment or underpayment of spousal support, that over- or underpayment shall be made up by setting it off against other monies that may be owing under these reasons.
- [307] The claimant's application for child support for P.G. after Separation is dismissed. The respondent is entitled to set-off child support he has paid the claimant pursuant to the Davies Order against any monies he may owe the claimant pursuant to this decision.

Property Division

- [308] The claimant will retain the following, free and clear of any claim from the respondent:
- a) the Lower Bench Rd Home located at 88 Lower Bench Road, Penticton, BC, with the claimant being solely responsible for the associated mortgage;
 - b) the Apex Cabin located at 1166 Apex Mountain Road, Apex Mountain, BC, including all fixtures, furnishings and household contents;
 - c) one-half of the increased equity of the Manufactured Home during the Relationship of \$43,500;
 - d) one-half of the net sale proceeds from the sale of the Oasis Property after repayment of the \$150,000 loan to Mr. Martin and after taking into account distributive taxes payable by 086 Ltd. and the respondent, as set out in paragraph 243 of these Reasons. I will leave it to counsel to perform the necessary calculations.
 - e) the 1996 BMW Convertible and the 2011 Range Rover;
 - f) all bank accounts and investment accounts in the claimant's name;
 - g) her investments with Industrial Alliance Financial Group; and
 - h) all jewellery in her possession and the Gent's diamond solitaire ring.
- [309] The claimant will be solely responsible for the following debts and liabilities:
- a) the Computershare Trust Company of Canada mortgage registered against the Lower Bench Rd Home under LTSA Registration #CA3712293;

- b) her personal CRA debt; and
- c) all credit card and other personal debts in her name.

[310] The claimant is also entitled to be paid one-half of the equity in the Apartment Block currently owned by 086 Ltd. net of distributive taxes as outlined in these reasons.

[311] Finally, the claimant is also entitled to 25% of the remaining increased value of the Companies' shares during the Relationship, based on Mr. Sanders' mid-range valuations, after taking into account her one-half interest in the equity of the Apartment Block.

[312] The respondent will retain the following, free and clear of any claim from the claimant:

- a) the Uplands Ct Home located at 121 Uplands Court, Penticton, BC, with the respondent being solely responsible for the associated mortgage;
- b) one-half of the increased equity in the Manufactured Home during the Relationship of \$43,500;
- c) one-half of the net sale proceeds from the sale of the Oasis Property after repayment of the \$150,000 loan to Mr. Martin and after taking into account distributive taxes payable by 086 Ltd. and the respondent, as set out in paragraph 243 of these Reasons;
- d) all vehicles in his name;
- e) the Carver Boat which is excluded;
- f) all snow machines in the respondent's possession, including the claimant's 2021 Arctic Cat Snowmobile;
- g) the kayaks and paddleboards;
- h) all bank accounts and investment accounts in his name;
- i) all issued and outstanding shares and shareholders loans in Trademark Industries Ltd., 0867873 BC Ltd., Superior Septic Services Inc., and TBD Holdings Ltd.;
- j) the proceeds from the surrender of the Industrial Alliance Insurance Policy #9513790870 in the amount of \$45,969.02; and
- k) all jewellery in his possession except the Gent's diamond solitaire ring, which is to be returned to the claimant.

[313] The respondent will be responsible for the following debts and liabilities:

- a) the Scotia Bank Mortgage, registered against the Uplands Ct Home under LTSA Registration #CA4668081; and
- b) all credit card or other personal debts in his name.

[314] Respecting the Apex Chalet located at 124 Creek View Road, Apex Mountain, BC, including all fixtures, furnishings and household contents, the parties will each have the option to buy out the other party's interest in it by way of sealed bids. Within 30 days of receipt of these reasons (or such other time as the parties may agree), each party is to file an offer to purchase the other party's interest with the Court in a sealed envelope. Once the bids are received, the Court will open the sealed envelopes and decide which party will buy out the other's interest and on what terms. The successful party will be solely responsible for the associated mortgage and will take reasonable steps to secure a release of the unsuccessful party's liability for the mortgage. The unsuccessful party shall also sign any and all necessary documentation to transfer his or her legal and beneficial interest in the Apex Chalet to the successful party, namely those lands and premises situate at 124 Creekview Road, Apex Mountain, BC (the Apex Cabin), and legally described as:

Parcel Identifier: 024-985-422; Lot 4, District Lot 395S, Similkameen Division Yale District, Plan KAP68689.

[315] The respondent will transfer BMO reward points to the claimant in an amount equal to 50% of the BMO rewards points as at July 6, 2020.

[316] Each party will retain his or her own CPP credits, free and clear from any claim by the other.

[317] I will leave it to the parties to determine any required equalization payment after accounting for support payment set-offs, the determination of the claimant's 25% interest in the increased value of the Companies shares during the relationship, the claimant's one-half interest in the equity of the Apartment Block and ownership of the Apex Chalet to be determined.

Transfers of Land

[318] The respondent will sign any and all necessary documentation to transfer his legal and beneficial interest in the Apex Cabin to the claimant, free and clear of any claim by the respondent, within seven days of the claimant delivering registrable transfer documents to the respondent for the lands and premises situate at 1166 Apex Mountain Road, Apex Mountain, British Columbia, and legally described as:

Parcel Identifier: 010-774-734; Block D, District Lot 4063S, Similkameen Division, Yale District, as to an undivided one-half interest.

[319] Concurrently with the transfer of the Apex Cabin, the claimant will arrange for refinancing so that the respondent is released from his obligation under the Bank of Montreal mortgage registered against it. Should the claimant be unable to secure such financing, the respondent may pay the outstanding balance of the Bank of Montreal mortgage and deduct that amount from the Equalization Payment.

[320] The claimant shall be responsible for paying all costs associated with the above land transfers, including but not limited to registration fees and property transfer tax.

[321] Except as set out above, the parties will keep all property currently in their possession free of any claim by the other, including household items and furnishings.

Other Matters

[322] The parties will do all things reasonably necessary to implement the terms of these orders.

[323] All other claims of the parties shall be and are hereby dismissed.

[324] The parties have liberty to apply for directions as to the implementation of the terms of these orders, provided that they shall attempt to resolve any disputes between them by negotiations through counsel prior to applying.

Costs

[325] The parties did not address costs. They may make submissions on costs once they have had a chance to review my decision.

"G.P. Weatherill J."

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