
CANADA / JUDGMENT

Lazorek v. Quinn

2007 BCSC 1348

COURT

Supreme Court of British Columbia

DECIDED

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2007 BCSC 1348 Lazorek v. Quinn

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Lazorek v. Quinn,

2007 BCSC 1348

Date: 20070910

Docket: E061116

Registry: Vancouver

Between:

Eva Alice Lazorek

Plaintiff

And:

Michael James Quinn

Defendant

Before: The Honourable Madam Justice Morrison

Reasons for Judgment

Counsel for the Plaintiff

Henning Wiebach

Counsel for the Defendant

Carey Linde

Date and Place of Trial:

February 5-9 and 14, 2007

Vancouver, B.C.

- [1] This is a matrimonial dispute where the main issues are the valuation of family assets and maintenance for the wife and two of the three children.
- [2] The plaintiff, Eva Alice Lazorek, was born October 25, 1955 and is currently 51 years of age. The defendant, Michael James Quinn, born December 20, 1951, is now 55 years of age. The parties met in 1986 at Whistler, and began cohabiting in 1987. They were married September 28, 1996 and separated February 6, 2005.
- [3] There are three children of the marriage, Natasha Alida, born September 15, 1988, soon to be 19 years of age; Jake William, born October 19, 1990, currently 16 years of age; and Lucas Robert, born April 19, 1993, now 14 years old. Natasha is living independently, although receiving assistance financially and otherwise from both parents. Jake lives primarily with his father but spends considerable time with his mother; Lucas lives primarily with his mother.
- [4] The plaintiff's writ issued on March 31, 2006. The statement of defence and counterclaim were filed April 7, 2006. A consent order was granted May 18, 2006 pursuant to s. 57 of the Family Relations Act, R.S.B.C. 1996, c. 128, confirming there was no hope of reconciliation between the parties.
- [5] The parties are in agreement that there be a decree of divorce, and an order for joint custody and guardianship of the two youngest children of the marriage. They also appear to agree that there should be a 50-50 split of family assets and debts, but there is a considerable difference with regard to the valuation of family assets. And uncertainty on family debts due to possible income tax liability and other tax consequences of the division of assets.
- [6] There has been an equal division of the equity in the matrimonial home. The defendant husband seeks to retain all interest in Whistler Air Services Ltd. ("Whistler Air"), the family company, and the 48% of shares owned equally by the parties in International Aircraft Leasing Ltd. ("IAL").
- [7] The defendant wishes to purchase his wife's share of the remaining family assets with a combination of lump sum and monthly payments. There may well be issues with regard to tax consequences on either the sale of the business or part of the business. At the present time, Whistler Air is solely in the name of Mr. Quinn, the defendant husband.
- [8] Counsel for the plaintiff has suggested that the court give a memorandum to counsel that would include a finding as to the value of the two companies, and a finding on entitlement to retroactive spousal and child support. And that then the parties be given an opportunity to structure a settlement with the assistance of their respective accounting advisors that might implement the findings made by the court. If that proves to be unsuccessful, then counsel

has suggested that the parties be given leave to make further written submissions with respect to the division of assets.

- [9] The parties have made repeated attempts, with the assistance of counsel, to settle these matters. Conflicting valuations of the companies and the assets within the companies, namely two airplanes, have made it difficult for the parties to reach an agreement. This judgment will therefore set out the findings with regard to the valuations, and I agree with counsel that the parties should then be given an opportunity to try and reach a structured settlement.

Background

- [10] Whistler Air operates as a charter and scheduled airplane business from Whistler, British Columbia. The company has a transferable lease from the province to operate from Green Lake at Whistler; that lease expires in June 2026. Mr. Quinn testified it was unlikely that the province would grant a rival company another licence to operate from Green Lake. He also confirmed that nearby Alta Lake has banned motorized boats, and it is unlikely that a float plane business would operate from there. There is no airport at Whistler, the closest airports being at Pemberton or Squamish.
- [11] Mr. Quinn began Whistler Air in 1986, and in 1987, Ms. Lazorek first became involved. The business has grown since that time, and at one time operated some helicopters as well.
- [12] By the late 1990s, Whistler Air was operating three aircraft, including an Otter aircraft leased from IAL. One of the three aircraft was sold in June 2005 for \$150,000. Whistler Air has a reciprocal agreement with Harbour Air Seaplanes for Whistler Air to use the dock of Harbour Air in Coal Harbour in Vancouver, and Harbour Air can use the Whistler Air dock on Green Lake. This is on a no fee basis.
- [13] The business season for the company is from April to November, depending on weather conditions. Maintenance and marketing are done during the non-operating season.
- [14] There is no question that the wife's contributions to the company Whistler Air, were significant. By 2004, her role in the company had diminished, as the demands at home with the three children had increased. She has had no involvement in the company since the separation in early February 2005.
- [15] IAL was a company set up by Mr. Quinn and Mr. Wolfgang Rauhall, Mr. Rauhall being the main shareholder of Sonanini Holdings Ltd. ("Sonanini"). IAL was set up to own a single Otter float plane which it leases to Whistler Air on fair market rental terms. Mr. Quinn owns 24% of the shares of IAL, Ms. Lazorek owns 24% of the shares, with Mr. Rauhall's company owning the balance.

Valuations of the 460 Otter and the Beaver Airplanes

- [16] Mr. Kenneth Leyden, the sole shareholder of Venture Aviation Services Ltd. was called as an expert witness by the plaintiff to give estimates of the two aircraft. The 1965 de Havilland DHC-2 Beaver, a seven passenger float plane, was valued at \$369,000 as of October 31, 2006. Mr. Leyden viewed the aircraft at Whistler. He reviewed the journey logs beginning in 1977 for the aircraft, and also reviewed the maintenance tracking printout.
- [17] Mr. Leyden was confirmed as an expert in the area of the appraisal for the present market value of aircrafts, particularly small piston and turbine aircraft. He is in the business of sales, leasing and brokerage of aircraft and appraisals of them. He has appraised 15 to 17 Otters in the last year and does approximately 50 to 100 appraisals a year of aircraft in general. He would appraise 5 to 10 Beaver aircraft a year.
- [18] Mr. Leyden's expertise and experience was impressive, and I have no trouble in accepting his valuation of the Beaver aircraft at \$369,000.
- [19] The conflict between the parties is over the valuation of the Otter aircraft. This is a 1960 de Havilland DHC-3T Turbine Otter, 11 passenger. Mr. Leyden viewed this float plane on October 31, 2006, and gave a value of \$1,430,000 in his report, as well as in his testimony.
- [20] Mr. Peter Evans was called on behalf of the defendant and he gave a valuation of this aircraft of \$1,200,000. Mr. Evans is the Vice-President of Operations for Harbour Air Seaplanes and has been for 20 years, and a seaplane pilot for the last 33 years. He has been involved in the sale and purchase of a number of similar aircraft, and there were 15 similar Otters in operation with Harbour Air at the time of his testimony.
- [21] Mr. Evans testified that he purchases planes for Harbour Air, which includes 15 Turbine Otters. He testified that Harbour Air is constantly in the marketplace, and, "We virtually own the market." Harbour Air apparently bought 12 of the existing 15 Otters in various stages of conversion. Mr. Evans does not make his living as an appraiser, and confirmed that Harbour Air has hired Mr. Leyden to appraise their fleet, particularly for financing purposes.
- [22] On cross-examination it was confirmed that Mr. Evans did not personally inspect the aircraft. He also said that the value was decided by a group. He did not review the log books and he was not aware of how many hours were on the air frame or the propeller. Nor did he review all the certifications.
- [23] I found Mr. Leyden's written reports and his evidence at trial comprehensive and compelling. I accept his valuation of the Otter aircraft at \$1,430,000. I reject the suggestion of any bias on the part of Mr. Leyden.

Valuations of IAL and Whistler Air

- [24] Two expert witnesses were called with regard to the valuations of these companies.

- [25] Ronald J. Tidball was called by the plaintiff. Mr. Tidball obtained his Bachelor of Commerce in 1981, became a chartered accountant in 1984, and in 1992 became a chartered business valuator. He has experience as an expert witness in our courts with regard to accounting and business valuations.
- [26] Two reports of Mr. Tidball were filed. The first, dated December 14, 2005 addressed to Mr. Wiebach, concluded that the fair market value of the interest of Mr. Quinn in Whistler Air plus the interest in IAL was approximately \$2,154,000. That was the valuation as of the date of separation in early 2005. However, at that time, he had been given the fair market value of the Otter aircraft at \$1,000,000 (U.S.). There was a subsequent report by Mr. Tidball dated January 27, 2007 which gave the valuation of the parties' shares in the companies at \$2,254,000. The difference was because of the value of the two aircraft. Mr. Tidball was using the fair market value of the Beaver aircraft at \$369,000, not \$400,000 as previously assumed. He also had now been given the value of the Otter aircraft at \$1,430,000, not \$1,200,000 (Can.) as previously assumed.
- [27] Mr. Tidball testified on cross-examination that he had spoken to Harbour Air, and that they would be interested in buying this business, but no figures had been discussed. He had not built in an estimate based on a special purchaser value. He gave no goodwill for IAL. Nor did he take any interest on the loan with regard to IAL into consideration.
- [28] To arrive at a figure for goodwill of \$920,000, he placed an earnings value of \$1,300,000 less net asset value of \$380,000.
- [29] Mr. Tidball did not take the estimated 2006 revenue figure into consideration, but testified that he agreed it upheld his valuation. In her testimony, Ms. Lazorek had said that after going through recently obtained documents for Whistler Air for 2006, she calculated the 2006 income for Whistler Air was at least \$1,350,000. She believed it would be more. In his testimony, Mr. Quinn did not argue with the figure of \$1,350,000.
- [30] Ron Miller was called to testify by the defence. Mr. Miller obtained a Bachelor of Business Administration in 1986, became a chartered accountant in 1990 and a chartered business valuator in 1991. He also has provided expert opinion before these courts involving business valuations.
- [31] Both Mr. Miller and Mr. Tidball valued Whistler Air on the basis of its capitalized earnings value. Mr. Miller valued Whistler Air at \$1,372,000. This was made up of operating assets and goodwill of \$800,000 and redundant assets of \$572,000. They differed in their valuation of operating assets and goodwill because of the following:
- (1) Mr. Miller deducted \$120,000 from the 2003 earnings of Whistler Air based on what the defence referred to as non-recurring revenue. This was due to a trip that Mr. Quinn made with the Otter to Antarctica in the winter of 2002/2003. There was no similar deduction made by Mr. Tidball for that year or any other year.

- (2) Mr. Miller used capitalization rates of 5.0 and 6.66, choosing the mid-point between the two. Mr. Tidball used the same range of capitalization rates, but he chose the higher rate of 6.66.
- (3) For his calculations, Mr. Tidball chose a two year average, whereas Mr. Miller calculated a two year average and a four year average, and then chose the mid-point between the two.
- (4) Mr. Miller valued IAL at \$205,000 showing operating assets of \$102,000 and a shareholders loan of \$103,000. Mr. Tidball showed operating assets of \$272,000 and the shareholders loan of \$102,000. The correct amount for the shareholders loan should have been \$103,000 as was later acknowledged by the plaintiff.
- [32] That left Mr. Miller's valuation of both companies at \$1,577,000 whereas Mr. Tidball had valued both companies at \$2,254,000.
- [33] Mr. Miller had accepted a valuation for the Otter mid-point between a \$1,100,000 valuation that was not in evidence and Mr. Evans' \$1,200,000 appraisal.
- [34] Both valuers accepted that there was a balance owing on the loan to Sonanini but only Mr. Miller included interest. He calculated compound interest to 2004.

Interest on the IAL Loan

- [35] Mr. Rauhall, a customer of Whistler Air for a couple of years, had offered to invest in the business, and Mr. Quinn and he had talked about another airplane. The Otter was purchased and Mr. Rauhall was to put in \$100,000, Mr. Quinn was to put in \$100,000, and then there would be a loan from Mr. Rauhall for the balance. A total of \$950,000 was paid to get the Otter on the water, and Mr. Rauhall's lawyer did a shareholders loan agreement. It provided for interest at prime rate. To date, no principal or interest has been paid to Mr. Rauhall. Mr. Quinn testified that Mr. Rauhall was happy to wait until Whistler Air grows or until the business is sold. There was also a loan with the Federal Development Bank which has mostly been paid off.
- [36] Mr. Quinn testified that he was aware in 1999 that interest was to be paid to Mr. Rauhall's company, but none has been paid to date. He agreed that the financial statements of Whistler Air never showed interest payable, and he said that was because his accountant, Ross Nichol, was unaware of the agreement. He also agreed that Sonanini had made no claim for interest to date.
- [37] Mr. Nichol, the accountant for Mr. Quinn since 1986, testified he was unaware of the agreement with regard to interest, and thus financial statements prior to 2005 indicated no interest payable.
- [38] It is the position of the plaintiff that if there is to be interest payable to Mr. Rauhall or to his company, Sonanini, that that should be offset by seven years of free flights that Mr. Rauhall has had with Whistler Air for himself, his family and friends. Ms. Lazorek points to six different days in 2006 where there were flights for Mr. Rauhall. In earlier years, she said

there were many flights including ones up to fishing camps for him, associates and family. And that these were all given free, and some would have been worth \$2,000 to \$3,000 per flight. There have been flights to Vancouver Island, and the Queen Charlottes as well as scenic flights to his dock.

- [39] Mr. Quinn agreed that Mr. Rauhall had had flights for himself, family and friends. He was asked if those flights would be worth many thousands of dollars, to which he answered, "That's right." Mr. Quinn denies that there should be any quid pro quo, that is, interest that may be payable to Mr. Rauhall's company to be offset by the value of the number of free flights over the past years. He was not in agreement with Ms. Lazorek's estimate that lost revenue to Whistler Air because of these free flights could have amounted to \$15,000 to \$20,000 a year.
- [40] Mr. Rauhall's company owns 52% of IAL. Initially he put up \$500,000, and then that was increased to \$750,000. It appears from the evidence of Ms. Lazorek that she does not take the position that Mr. Rauhall's company should not get interest, but that the free flights should be considered vis-à-vis any interest owing.
- [41] Kelly McArthur, a part-time employee of Whistler Air, testified that last year Mr. Rauhall had a number of free flights. She estimated two or three a month. Sometimes with family or visitors. She said she never took a payment from Mr. Rauhall. Often the flights were to Vancouver. She also testified she never sent an invoice to him.
- [42] Mr. Rauhall testified that he lives in Germany and at Whistler. His home is on Green Lake and has been since 1978. He met the parties in 1995 or 1996. Sonanini is a company owned by him. Sonanini loaned the money to IAL, but Mr. Rauhall was not quite sure of the details. However, interest was spelled out in the agreement.
- [43] With regard to free flights, Mr. Rauhall testified that he always offered to pay, but that Mr. Quinn said no, there was no need to pay. He said those flights might occur five or six times a year, when he was in the country.
- [44] I think the position taken by the plaintiff is fair. That interest calculated payable to Mr. Rauhall's company should be offset by an accounting of the free trips accorded to Mr. Rauhall over the years since the time of the agreement between the parties with regard to IAL. However, neither Mr. Rauhall or Sonanini are parties to this action, and such an offset would be up to the parties and Mr. Rauhall to work out.

The Antarctic Trip and Revenue

- [45] In November 2002, Mr. Quinn flew the Otter to the Antarctic for work there during the season that is summer in the Antarctic. He came back to his home in Whistler before Christmas that year, and then went down again in the early spring, returning in March 2003. It took six weeks for him to get home from the Antarctic.

- [46] Mr. Quinn contends that the net revenue from the Antarctic trip was \$156,983. This was included in the revenue for Whistler Air for 2003. However, there is a disturbing lack of source documents for this trip, for both revenue and expenses. The contract was with Adventure Network International ("ANI"). No contract was produced. There was no production of any invoices sent to ANI, nor any record of payments received from ANI. There were few if any source documents with regard to expenses relating to this contract. There were Visa statements and some cancelled cheques produced by Mr. Quinn, but he failed to produce appropriate source documents or business records with regard to this trip, in my view.
- [47] Counsel for the plaintiff takes issue with the record of hours flown with regard to this contract and the lease rate charged by IAL. Mr. Quinn calculated the IAL lease payments associated with the ANI contract were \$78,810. But it appears that the Otter was flown more hours than were originally calculated by Mr. Quinn. How much was the Otter leased for? In 2002 the Otter was apparently leased for \$264 an hour, but for \$400 an hour in 2003. Mr. Quinn had placed a rate of \$300 an hour for the lease of the Otter.
- [48] Taking Mr. Quinn's evidence and documentary evidence into consideration, counsel for the plaintiff argues that Mr. Quinn's total expenses of \$156,983 must be altered as follows: there should be an additional deduction of \$20,915 for additional lease payments to IAL, a further deduction of \$15,170 for fuel, an additional deduction for insurance of \$13,500, \$5,000 for a Ministry of Transport fine, and \$4,000 for permits. There would be additional deductions for fuel and substantial deductions for added insurance.
- [49] A letter of November 26, 2002 showed an invoice for \$13,500 for extra insurance for "ferry flight from Canada to Antarctica." However, there is no indication of what insurance was paid or payable for the time that the Otter was in the Antarctic or the ferry flight back, or for 301 hours flown in what counsel for the plaintiff referred to as "hostile territory". I assume he means the weather.
- [50] The financial statements show that in 2003 the insurance costs for Whistler Air were \$104,450. In 2002 they were only \$47,494 and in 2004 they were \$44,743. The plaintiff contends that the only possible explanation for such increased insurance costs in that one year can be the cost attributable to the Antarctica trip. Again, there was a lack of documentation with regard to insurance or source documents with regard to this expense item.
- [51] The same is true with regard to aircraft maintenance. In 2003 aircraft maintenance showed as an expense of \$115,905. In 2002 that item was \$64,472 and two years later in 2004 it was \$55,739. Again, no invoices or source documents were produced to show why there was such a difference, nor was there any explanation given for this difference. The plaintiff contends these were expenses attributable to the Antarctic trip.

- [52] In my view, given the serious lack of documentation with regard to this Antarctic contract, there should be no deduction made for any Antarctic contract revenue. That is, no deduction of \$120,000. The defendant has failed to establish the validity of such a deduction.
- [53] With regard to the Antarctic trip, Mr. Miller was unaware of a number of pertinent facts in the preparation of his report. He was unaware that there was any activity in 2002 with regard to the trip. He saw no documents with regard to expenses, and he saw no invoices. Mr. Miller's deduction of \$120,000 of net income from 2003 would appear to be based on misinformation given to him, or lack of information.
- [54] In denying that deduction, that would then alter the calculations made by Mr. Miller in his valuation of Whistler Air.
- [55] In my view, the second valuation given by Mr. Tidball should be accepted. I agree that the higher capitalization rate of 6.66 is appropriate, the one used by Mr. Tidball. I think it is significant that the calculated 2006 revenues bear out the valuation and the figures given by Mr. Tidball.

Cash Calculations

- [56] Both parties testified that from the beginning of the business, cash was received through Whistler Air, never declared, and was used for family, personal and business purposes. This practice continued up to the time of separation, and beyond. The procedure the parties would follow prior to separation was that at the end of each day, the staff would be instructed to put cash and traveller's cheques into separate envelopes, with the total written on the different envelopes. Mr. Quinn would then bring home the envelopes every night or two. The cash was never shown as a deposit nor were traveller's cheques. Those monies never earned interest, and they were not declared for tax purposes. The safety deposit box contained cash and traveller's cheques.
- [57] Flight reports are extremely significant in arriving at an accurate figure of business done by Whistler Air. The flight reports are numbered sequentially. They show the date of the flight, which aircraft was used, the passenger list with the name of each passenger, and how each passenger paid, whether by Visa, traveller's cheque, through a tour, or cash, for example. The name of the pilot and the signature of the pilot are on each report, plus the total of money collected, whether any commission was paid, or GST, with a final total.
- [58] In his testimony, Mr. Quinn first said that the flight reports for 2004 and 2005 were "destroyed". The evidence showed that on June 2, 2006 there was a letter from Mr. Wiebach asking for these flight reports. Further letters on June 23 and August 10 asked for the same reports. Then there was a notice of motion on September 11, 2006 by counsel for the plaintiff seeking those reports.

- [59] If the flight reports were unavailable or incomplete, then the plaintiff and her counsel would be unable to calculate the amount of cash paid for an individual flight and the amount of cash paid over that particular year. Without a complete record of all flight reports, it would be impossible to give an accurate calculation of flights made, reservations, prices, and who paid in cash as opposed to paying by Visa or some other means.
- [60] In cross-examination, Mr. Quinn agreed that cash was missing and that the financial statements were not accurate. This practice of putting cash in separate envelopes and then placing the cash in their safety deposit box was the practice of both parties until the separation. After that, Mr. Quinn was in sole charge of things, and Ms. Lazorek was unable to get the source documents and the information that she required to make calculations of how much cash was being taken from the business. At one point Mr. Quinn used the phrase, "squirreling cash away". That is a rather benign description.
- [61] Finally, on the eve of trial, an incomplete record of more current flight records was provided by the defendant. However, there were still gaps in these source documents.
- [62] When Mr. Quinn was asked with regard to certain financial specifics with regard to Whistler Air, he frequently answered that he did not know, or he was not sure, or he would "have to ask Ross", meaning Ross Nichol, his accountant. Mr. Quinn's lack of knowledge with regard to certain aspects of his business was not helpful to his case. Nor did it lend weight to his estimates of profits and expenses. The same can be said for his lack of source documents.
- [63] Both Mr. Tidball and Mr. Miller were aware that cash had been taken from Whistler Air and certain personal expenses were paid for by the company. Mr. Tidball made two calculations, one being \$40,000 and the other \$55,000, this being the value of cash taken from the company and personal expenses paid for by the company during the years 2002 to 2004. Mr. Miller assumed an amount of \$50,000.
- [64] In her evidence, Ms. Lazorek testified that her estimate was closer to \$80,000 for the most recent year. One documentary ledger in Mr. Quinn's writing showed a total of \$59,519 for the months of June, July, August and September. But the year was not specified. Nor were there any entries made for April, May, the majority of June or October. Counsel for the plaintiff states that this ledger is consistent with his client's evidence that a figure closer to \$80,000 in cash has been removed from Whistler Air in the most recent years. There was no evidence from Mr. Quinn with regard to those ledger entries.
- [65] Just prior to the trial, on receiving the 2006 flight reports, Ms. Lazorek calculated that \$54,275 was received in cash, and a further \$105,412 was unassigned. There were also flight reports that were missing.

- [66] My own view of the evidence is that the higher figure given by Ms. Lazorek is probably closer to the truth, but that certainly a figure of \$55,000 would be appropriate, if low. The expenditures made by Mr. Quinn and Ms. Lazorek prior to separation would seem to indicate that the money could only be coming from cash. The same holds true for Mr. Quinn and his expenses and expenditures following the separation. The personal expenses of Mr. Quinn are apparently \$11,358 a month.
- [67] The evidence of Ms. Lazorek is that in 2004, for example, there was \$82,000 in cash, which was kept in the parties' safety deposit box. When she separated in February 2005, she took half the remaining cash that was in the safety deposit box and left the other half for Mr. Quinn. She took \$20,000 and left \$20,000 in the box.

Credibility

- [68] Generally, I found Ms. Lazorek to be credible. She was familiar with the books and the business end of Whistler Air. She knew the documents she needed, and she knew which documents were missing. Her testimony was not self-serving, but was given in a direct and credible manner.
- [69] In those areas where the evidence of Mr. Quinn conflicts with the evidence of Ms. Lazorek, I accept the evidence of Ms. Lazorek. Generally, Mr. Quinn's evidence simply lacked the specific knowledge that his wife's did. Which is understandable, as his functions were more as a pilot, general manager and someone who took care of the aircraft, whereas Ms. Lazorek was taking care of the books, along with her other duties.
- [70] Mr. Tidball's valuation is accepted as the most accurate estimate on the issue of the valuations of the companies. But interest payable to Sonanini should be taken into consideration. And cash of a value of \$55,000 or more, where a higher figure is indicated by source documents such as the flight records. There should also be assumed additional income for free flights on behalf of Mr. Rauhall. I have already indicated no revenue is to be included from the Antarctic trip.

Division of Assets

- [71] All assets are family assets, and must be divided equally.
- [72] Mr. Quinn is anxious to keep the business of Whistler Air, and it may well be reasonable for him to have the opportunity to buy out his wife's interest in the family business. But the defendant cannot expect to keep both the business and the house, pay huge monthly mortgage payments in order to do so, and ask that his wife wait to be paid on the pay later plan. In my view, it is a total lack of reality for either party to expect they could afford to keep both the house and the business. Both parties have to face the reality of downsizing their living accommodations to adjust to the fact that there are now two homes to keep up rather than just one.

- [73] In the defence settlement proposal that was put before the court, Ms. Lazorek would receive \$578,065 as her share of the companies. Mr. Quinn proposes that he would obtain \$100,000 by a loan from Whistler Air, a further \$290,000 by mortgaging the matrimonial home, and the remaining \$188,000 would be paid to Ms. Lazorek over a period of five years with interest at 3%. In cross-examination, Mr. Quinn acknowledged he was not willing to sell his half of the business to his wife for \$500,000, as he said that she would sell the business then to his competition.
- [74] I have already stated that the parties will be given an opportunity to structure a settlement with the assistance of their counsel and accountants, but such a settlement obviously must be based on not only valuations determined in this judgment, but also keeping in mind the obligations of spousal and child maintenance. The defendant's RRSP of approximately \$64,000 is part of the family assets.
- [75] The parties are concerned with keeping any tax consequences on the sale of part or all of the business as low as possible. Those concerns will obviously help dictate what type of settlement can be structured.

Spousal and Child Maintenance

- [76] When Ms. Lazorek left the family home on February 5, 2005, she took one-half the funds in cash from the safety deposit box, \$20,000, plus a further \$20,000 from Whistler Air's chequing account. Other funds were taken by her or sent to her and by the summer of 2006, she had received a total of \$163,509. This included cashing in her RRSPs, cashing in an educational trust fund that had been set up for the children in the amount of \$44,535, and \$20,000 deposited into her account by Mr. Quinn in February 2006. Whistler Air paid for her leased vehicle until the fall of 2006 when that was terminated.
- [77] Upon separation, the husband and wife were in two very different positions. Mr. Quinn remained in complete control of Whistler Air. He had full time employment, and access to all declared and undeclared income from what was becoming a very profitable business. On the other hand, Ms. Lazorek no longer had the home, having left the matrimonial home. She was no longer employed. She needs retraining for other employment. And more important, she no longer had access to Whistler Air, and its declared and undeclared income.
- [78] Counsel for the plaintiff points to the significant expenses that Ms. Lazorek has had since separation, which included two moves to and from Squamish, a number of expensive items dealing with the children's expenses, \$21,392 in income tax for 2004 on monies that were allocated to her, legal fees, etc. The total amount of those expenses up to May of 2006 was \$149,323.

- [79] Since May 2006 Ms. Lazorek has paid for living expenses by diminishing her capital. She has not worked, although she has middle management abilities. Her testimony is that she felt that she had to be available for the children, who are having some serious difficulties, which may in part have resulted from the separation. She suffered a broken leg in December 2005 and was on crutches for a period of time.
- [80] The problems that the children have experienced in the past few years have been serious, and have demanded the attention of one or both parents at all times. There is no need to go into any details with regard to those problems. But I agree with the evidence of Ms. Lazorek that upon separation was not the time for her to commence alternate full time employment, given those problems.
- [81] Ms. Lazorek appreciates that she will have to work, and she intends to find work. Her counsel has suggested that an income of \$30,000 should be imputed to her after a period of six months, in order that she have an opportunity to obtain some retraining. He further contends that the income that should be imputed to Mr. Quinn is \$180,000, based on figures disclosed in the financial statements with regard to salaries paid, and expenses paid by Whistler Air for personal expenditures by Mr. Quinn.
- [82] Based on such imputed incomes, Mr. Quinn would be paying child support for Lucas to a greater extent than Ms. Lazorek would be.
- [83] Ms. Lazorek seeks retroactive maintenance for herself and Lucas, and in my view that is appropriate. There will be retroactive child maintenance payable commencing June 1, 2006 up to and including September 1, 2007. It will be based on the imputed income for Mr. Quinn of \$180,000, and no income for Ms. Lazorek. This will be for the two younger children.
- [84] It is also appropriate under these particular circumstances that Ms. Lazorek receive spousal maintenance, retroactive to June 1, 2006. Given that she has been awarded retroactive child maintenance, the amount of retroactive spousal maintenance commencing June 1, 2006 up to and including September 1, 2007 will be \$2,000 a month.

Future Spousal Maintenance

- [85] The plaintiff seeks indefinite spousal maintenance, or maintenance for a period of 15 years, to be reviewable upon a change in circumstances. The defendant resists any claim for spousal maintenance, claiming that Ms. Lazorek is capable of earning a good living with her background and experience.

- [86] The plaintiff is 51 years of age, clearly intelligent and capable. But for the last 18 years, her efforts have been concentrated on helping her husband build their family business, Whistler Air. She testified that she needs retraining, and that is reasonable under the circumstances. She is entitled to spousal maintenance for a period of time to establish herself in a new career. At the present time, her earning capacity is nowhere near that of her husband, and that must be taken into consideration as well.
- [87] There should be spousal maintenance payable to Ms. Lazorek for a period of two years, and the question of spousal maintenance should be reviewed at that time. However, it is not possible to set an amount of spousal maintenance at this time, until it is known how the division of family assets and debts will affect both these parties. The parties may be able to resolve the matter of the amount of spousal maintenance for the two year period during their attempts to reach a structured settlement. If a settlement is not reached, then the parties will return to court for final resolution of the division of family assets and spousal maintenance.
- [88] With regard to child support, there will be an imputed income for Ms. Lazorek of \$30,000 a year, commencing October 1, 2007.
- [89] The parties are at liberty to make further submissions to the court either in writing or in person, as they wish.
- [90] I will leave the matter of costs to be addressed at a later time. There were no submissions as to costs at trial.

Summary

- [91] There will be an order that the parties be divorced, to take effect 31 days from this date.
- [92] There will be an order for joint custody and guardianship of the two youngest children of the marriage: Jake William, born October 19, 1990 and Lucas Robert, born April 19, 1993.
- [93] The parties will have an opportunity to try and reach a settlement with regard to the division of assets based on the findings made in this judgment on valuations.
- [94] There will be child support and spousal maintenance as set out in this judgment.
- [95] The parties are at liberty to make further submissions to the court in the event that settlement is not achieved with regard to the division of family assets, and also if the amount and duration of future spousal maintenance cannot be resolved.
- [96] Costs may be spoken to at a later date.

"Morrison J."

Madam Justice Morrison

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