

CANADA / JUDGMENT

Mach v. Mach

2021 BCSC 1655

COURT

Supreme Court of British Columbia

DECIDED

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2021 BCSC 1655 Mach v. Mach

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Mach v. Mach,

2021 BCSC 1655

Date: 20210824

Docket: E183025

Registry: Vancouver

Between:

Jennifer Elaine Yee May Mach also known as

Jennifer Elaine Yee May Tam

Claimant

And

Bao Trung Mach and 1112670 BC Ltd.

Respondents

Before: The Honourable Madam Justice Tucker

Reasons for Judgment

Counsel for the Claimant:

D. MacKinnon

The Respondent, Bao Trung Mach, appearing on his own behalf in person and as Representative of the Respondent, 1112670 BC Ltd.:

B.T. Mach

Place and Dates of Trial:

Vancouver, B.C.

September 28-30

October 1-2, 5-7, 2020

Place and Date of Judgment:

Vancouver, B.C.

August 24, 2021

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I. Introduction

- [1] The parties moved in together in or around August 1998. They married on July 7, 2007. I find below that they separated on December 31, 2016.
- [2] At the time of trial, the claimant was 43, the respondent was 45, and their two children were aged 8 and 10.
- [3] From the separation through to July 2018, the claimant had primary custody of the children. Since July 2018, they have shared parenting time on a 50/50 basis by agreement.
- [4] The respondent, 1112670 BC Ltd. ("BM Co"), was incorporated on March 24, 2017. The personal respondent, Bao Trung Mach is BM Co's sole director.
- [5] The notice of family claim was filed on November 8, 2018.
- [6] Pursuant to a trial management order, the matter proceeded to hearing on financial matters alone.

II. Background and Facts

A. 1998 through Separation

i. The Beginning

- [7] The parties met in their early 20s. They moved in together after the claimant completed studies in graphic design at college and while the respondent was attending Simon Fraser University ("SFU") and working part-time at the SFU library. Neither brought assets into the relationship at that time. They soon combined their finances.
- [8] After graduation, the claimant worked in administrative positions while trying to move into marketing. By 2006, she was doing some commercial and advertising work and earning \$48,000 a year. The respondent graduated from SFU, but continued to work at the library, where he earned about \$30,000 to 35,000 a year.
- [9] In 2006, the claimant took a position as office assistant for an individual whose business put on property investment seminars. She did some design work for seminar materials as well as administrative work, and earned about \$70,000 a year.
- [10] The parties married in July 2007 and bought a condominium unit in Richmond, BC. At some point in 2007, they also bought a house on 88th Street in Edmonton ("Edmonton House") as an investment.

ii. Group Co

- [11] In or around 2007/2008, the respondent and some of his high school friends formed an investment group (the "Group"). In addition to the parties, two members testified about the Group: Edmond Lam and Huei Long.

- [12] The Group would pool funds and enter pre-sale agreements for condominium units and resell them after closing. The Group was formed on a handshake agreement. The respondent had a lead role in managing the Group's finances.
- [13] Pre-sale agreements commonly require some funds to be on deposit at the time the agreements are entered into; further funds to be deposited as construction markers are reached, and the remainder of any cash component to be paid at closing. The property sale does not close until after construction is complete, and the time between entering the pre-sale agreement and closing is commonly two to three years (but can be several more). If the market value increases during the construction period, closing and reselling turns a profit.
- [14] The understanding was that members would contribute capital equally, and capital and profit would stay in the Group pool and be reinvested over time until the members turned 55, at which time the Group would dissolve and its holdings would be distributed equally. Individual members took turns acting on behalf of the Group under their individual names.
- [15] There were originally five members, but two left, and one new member joined. Notably, the members who left took with them only the capital they had put in. They did not receive any share of the profits made prior to their departure.
- [16] In September 2017, the Group incorporated as 1131539 BC Ltd. ("Group Co"). The respondent continued to be responsible for managing the finances, along with Mr. Lam.
- [17] In his evidence, Mr. Long bemoaned Group Co's lack of transparency. He testified that he had been asking for financial statements since 2018. He was skeptical about never-ending demands for further capital contributions. He suspects the company is paying unreasonably high mortgage rates to private lenders. Mr. Long and the respondent both testified that Group Co was going to be dissolved.

iii. Through to Separation

- [18] In 2008, the claimant was laid off from the seminar business. She did some work for the respondent's brother-in-law and then took contract work designing course materials for S.U.C.C.E.S.S.
- [19] In the fall of 2010, the respondent got his real estate licence and began operating a personal real estate corporation ("PREC"). He also continued to work shifts at the SFU library (and would continue through February 2018).
- [20] In the fall of 2010, their first child, a daughter, was born. The claimant was on maternity leave through September 2011. At the end of that leave, the parties agreed that she should work from home, and she took a position marketing mortgages for Royal Bank of Canada ("RBC"). The claimant became pregnant again and, following the birth of their son in September 2012, took a second maternity leave. After the leave, she attempted to resume her work with RBC, but found two children too disruptive. The parties agreed the claimant should be a stay-at-home parent until the children were older.

- [21] The respondent wanted to shorten his work commute. The parties agreed to move to Olympic Village in Vancouver. They entered into two pre-sale agreements for two strata units: Units 1003 and 1004 at 1775 Quebec Street ("Opsal"). The two units were combined in construction to create a three-bedroom residence, but the strata units were never legally combined, so the Opsal residence has two mortgages and pays two strata fees.
- [22] The parties moved into Opsal in September 2014. The claimant was responsible for taking care of the children and household matters. She was given an "all-in" monthly allowance of \$3,500 to cover things such as school fees, activities, clothing, groceries, and sundries.
- [23] In June 2016, pursuant to earlier discussions between the parties, the respondent entered a pre-sale agreement for a townhouse: Unit 107 at 1688 Pullman Porter Street ("Navio"). The plan was to move to Navio as the family residence. An initial deposit of \$199,990 was made on June 25, 2016. Further deposits were made prior to closing.
- [24] In June 2016, the parties had issues in their relationship and subsequently began to attend counselling. The counsellor suggested they live apart while working on their marriage.
- [25] In August 2016, the respondent moved into an investment property they had bought several years earlier: Unit 907 at 1323 Homer ("907 Homer"), and the parties continued to see the counsellor.
- [26] In November 2016, Mr. Long, acting on behalf of the Group, entered into a pre-sale agreement for a property referred to only as "Lougheed". The respondent contributed \$10,700 toward the initial Lougheed deposit.
- [27] At year end, the claimant told the respondent the relationship was done. I find the parties separated effective December 31, 2016.
- [28] Following separation, the respondent continued to reside in 907 Homer and the claimant stayed in Opsal.

B. Properties: January 1, 2017 through May 13, 2019

i. At Separation

[29] At separation, the parties held direct or indirect interests in the following properties:

a) properties held for the Group (subsequently transferred to Group Co) ("Group Properties"):

i. Unit 211 at 1088 Richards ("211 Richards");

ii. Unit 308 at 1088 Richards ("308 Richards");

iii. Unit 508 at 445 West 2nd Avenue ("508 Maynards"); and

iv. Lougheed;

b) other (non-Group) properties ("Personal Properties"):

- i. Edmonton House;
- ii. Unit 2908 at 1151 West Georgia Street ("2908 Trump Tower");
- iii. Unit 223 at 159 West 2nd Avenue ("223 Tower Green");
- iv. Unit 1401 at 159 West 2nd Avenue ("1401 Tower Green");
- v. 907 Homer;
- vi. Opsal; and
- vii. Navio.

ii. Dealings with Properties

- [30] In March 2017, 2908 Trump Tower was sold.
- [31] In August 2017, 211 Richards was sold.
- [32] In September 2017, the Edmonton House was sold.
- [33] In November 2017, 308 Richards was sold.
- [34] In November 2017, BM Co entered into pre-sale agreements for Units 306 and 616 at 180 East 2nd Avenue ("Second + Main Properties").
- [35] In January 2018, 508 Maynards was sold.
- [36] At some point in 2018, the respondent informally borrowed about \$130,000 from Group Co. When the members became aware of this, they demanded the money be repaid.
- [37] The pre-sale agreement for 223 Tower Green was in the respondent's name. In January 2018, the purchase of 223 Tower Green closed with BM Co as the owner. The respondent put up \$35,507 in completion costs to enable 223 Tower Green to close. As of trial, 223 Tower Green was rented out to a third party and listed for sale.
- [38] The pre-sale agreement for 1401 Tower Green was in the claimant's name. When closing was approaching, the respondent asked the claimant to sign an assignment form to enable the closing to proceed. In January 2018, the purchase of 1401 Tower Green was closed with BM Co as the owner. The respondent put up \$30,848 in completion costs to enable the purchase to close.
- [39] In February 2018, BM Co sold 1401 Tower Green, resulting in net sale proceeds of \$421,488.
- [40] The purchase of Navio closed on or about June 1, 2018. The respondent borrowed money for the remaining down payment and obtained a private lender mortgage.
- [41] Finally, at some point in time, the respondent and/or BM Co borrowed funds to put toward a deposit under a pre-sale agreement for a unit in a development referred to only as "Grayson".

C. Vehicles

- [42] At separation, the family had two cars. The respondent drove an Infiniti FX35, which the parties owned, and the claimant drove an Infiniti JX35, which was leased.
- [43] In August 2017, the lease on the JX35 expired. The respondent considered the buyout price a good one and told the claimant he would pay for it. The claimant took a buyout loan in her name and the respondent made the payments on it for a few months, but then stopped. After that, she made the \$739 monthly payments herself.
- [44] In November 2017, the respondent leased a Maserati and gave the FX35 to his sister.
- [45] The respondent owns a 2007 Triumph Speed Triple motorcycle. His evidence is that it needs repairs and new tires.

D. Miscellaneous

- [46] The claimant had a Tax Free Savings Account with a \$175 balance at the date of separation.
- [47] Both parties have what they refer to as "B2B" accounts. As I understand it, the parties have debts incurred to participate in a multi-level marketing scheme involving stock investment. According to the claimant, she owes about \$12,000 as a result of her B2B investments and the respondent owes about \$6,000.
- [48] Aside from the TFSA and B2B accounts, there appears to have been little to no cash savings for division at the time of separation. This reflects the fact that almost all of their family funds were invested in properties and the respondent was constantly moving around whatever money they did have.

E. Payments to the Claimant

- [49] For a period following separation, the respondent continued to provide the claimant's \$3,500 monthly allowance, and she continued to use it to pay expenses for herself and the children.
- [50] In October 2018, the respondent provided only \$1,500.
- [51] In November 2018, he provided \$1,600.
- [52] In December 2018 and January 2019, the claimant received no allowance.
- [53] In February 2019, the respondent provided \$1000.
- [54] In March 2019, the respondent provided \$1000.
- [55] In April 2019, the claimant received no allowance.

F. Joint Line of Credit

- [56] In February 2019, the respondent withdrew \$10,000 from a dormant joint line of credit ("Joint LOC"). A further \$2,500 was withdrawn in March 2019 and deposited into the parties' joint TD 568 account.
- [57] In May 2019, the claimant received a notice of delinquency under the Joint LOC and began paying the monthly minimum payments. The payments were initially made from the parties' joint TD 568 account until August 2019, after which they were made from another account. The evidence shows that the joint line of credit was paid off in May 2020 for \$12,513.92.

G. May 13, 2019: Sharma Order

- [58] On May 13, 2019, Justice Sharma made an interim order ("Sharma Order"). The Sharma Order set the respondent's guideline income at \$249,817 for purposes of child support and provided as follows:
1. the Respondent, Bao Trung Mach, pay interim child support in the sum of \$3,337.00 a month commencing March 1 2019 and monthly thereafter until further Order or agreement of the parties pursuant to the Family Law Act.
 2. the Respondent, Bao Trung Mach, pay interim spousal support in the sum of \$4,694.00 per month pursuant to the Family Law Act, commencing March 1, 2019 and monthly thereafter, whereby for the month of March, 2019, given that the Respondent, Bao Trung Mach paid the entirety of the mortgage and strata fees on the Opsal property, the sum payable by the Respondent, Bao Trung Mach, to the Claimant for the month of March, 2019 is \$4,694 00 less \$1,750.00, being \$2,944.00, and commencing April 1, 2019 and monthly thereafter in the sum of \$4,694.00.per month until further Order or agreement of the Parties
 3. Commencing April 1 2019, the strata fees and the mortgages at 1003 and 1004 Quebec (hereinafter referred to as "Opsal"), being TD registered under CA3935956 and TD registered under CA3935956 (hereinafter referred to as "the Opsal Mortgages") with a total of \$3,500.00 and shall be divided equally between the Claimant and the Respondent without prejudice to either party's position at trial.
 - a. retroactive to March 2019, the Claimant shall pay 1/2 of the Opsal Mortgages and 1/2 the strata fees for Opsal whereby the Claimant's total 1/2 contribution is currently \$1,750.00 a month from monies paid by the Respondent to the Claimant by way of interim spousal support as set out in paragraph 2, such payment to continue monthly until further agreement or Order of the Court
 - b. retroactive to March 2019, the Respondent shall pay 1/2 of Opsal Mortgages and 1/2 the strata fees for Opsal which total 1/2 contribution currently is currently \$1,750.00 a month, such payment to continue monthly until further agreement or Order of the Court.

4. The support Orders are without prejudice to either party's position at the trial of this matter.
 5. The parties should exchange their tax information, including corporate financial income, no later than July 1 of each year.
 6. Commencing the date of this Order (unless there is a tuition waiver), the extraordinary expenses, being Chinese school and Catholic school (being \$200 and \$500 a month) and other extraordinary expenses as agreed between the parties, are to be shared proportionately between the parties in accordance with their incomes.
- [59] The Sharma Order also provided for Navio, 907 Homer, and 223 Tower Green to be sold and the net proceeds put into trust.
- [60] The Sharma Order also required the respondent to reacquire the FX35 from his sister and provide it to the claimant, and for the claimant to sell the JX35 and repay the vehicle loan with the proceeds.

H. May 2019 (Sharma Order) to Trial

- [61] The vehicles terms of the Sharma Order were complied with by both parties.
- [62] In June 2019, no support was paid by the respondent.
- [63] As of trial, the respondent had directly paid a total of \$1,000 toward support under the Sharma Order.
- [64] The Family Maintenance Enforcement Program ("FMEP") garnished funds under the Sharma Order on two occasions.
- [65] In January 2020, FMEP collected \$13,000.
- [66] In April 2020, 907 Homer was sold resulting in \$119,819 in net sale proceeds. In May 2020, the net proceeds were garnished by FMEP. \$98,482.93 was paid out to FMEP to cover the respondent's balance of outstanding arrears in whole. An additional \$20,000 was sent to the Director of Maintenance Enforcement to be held in trust.
- [67] Navio was never put up for sale. There is no evidence the claimant agreed with this. The respondent rented Navio to a third party for seven months, receiving \$53,665 in rental income. He then resumed residing there.
- [68] The respondent sold the Second + Main pre-sale agreements to his sister.
- [69] In May 2020, the claimant paid \$12,500 against arrears owing on the Opsal mortgages. Thereafter, payments on the mortgages were suspended under applicable COVID-19 pandemic relief measures.

I. The Claimant's Return to Employment

- [70] The claimant did not take employment until the parties' son started school in September 2017. Between separation and September 2017, the claimant took him to and from preschool and his other activities, looked after him when he was not in those programs, and did the same with the parties' daughter. The daughter's school and son's preschool were not on the same schedule. The claimant did do some casual work as a contractor, such as house painting and taking care of an autistic child.
- [71] When their son started school, the claimant obtained part-time employment as a monitor at the school.
- [72] She looked into becoming a tattoo artist as it would make use of her graphic arts training and provide flexible hours. She bought the required equipment set and, on August 20, 2017, paid a \$4,500 registration fee in order to apprentice at an accredited studio. Unfortunately, the studio closed before she finished the apprenticeship. As she could not afford a second registration fee, she tried to get work as an artist. After a trial period, she was advised to complete the apprenticeship.
- [73] At that point, mid-2018, she opted to pursue cosmetic work, as it does not require full qualifications. A studio agreed to provide a chair and a mentor and the claimant took the appropriate cosmetic courses. The studio let her schedule cosmetic appointments around her childcare obligations.
- [74] In February 2019, she started working casual hours at a Starbucks as well as working at the cosmetic studio.
- [75] In May 2019, she got a full-time position in a medical office at \$20 an hour, and also continued at the cosmetic studio.
- [76] In June 2019, she obtained a term position with Icon Consultants Canada ("Icon") at \$29 an hour. She was able to work from home and set her own break times, which enabled her to also shuttle the children around as required. She also continued at the cosmetic studio until the COVID-19 shutdown. During COVID, Icon switched to Toronto hours, and she started work early and then helped the children with online school. Icon has offered her a regular position, which she will start at the end of her term position.
- [77] The respondent says the claimant ought to have started work immediately after separation. He also submits that she ought to have taken financial industry work given her RBC experience, and that it was unreasonable to try to become a tattoo artist. He also submits that she was capable of earning at least \$70,000 a year as of separation as demonstrated by her salary at the real estate seminar business.

- [78] The claimant had primary custody of two very young children. The children had different school/preschool and activity schedules, breaking up her day. It was reasonable in the circumstance to seek employment in September 2017, once the children were both in school and on the same schedule.
- [79] The claimant's RBC position involved entry level marketing demonstrating the sort of mortgage clients could expect to obtain if they applied. The position did not put her on track for a financial services career.
- [80] The claimant's 2007 seminar business salary appears not to have been market-based. It was a significant departure from both earlier and later positions. She testified to having been surprised to be paid \$70,000. That salary is not evidence of her actual earning capacity.
- [81] Finally, it was reasonable to attempt to become a tattoo artist. The apprenticeship period was of a reasonable length and cost and it made use of her graphic arts training. It would have paid reasonably and she could have set her hours around the children. The apprenticeship ended for reasons beyond her control.

III. Overview of Positions

A. Claimant

- [82] The claimant is not seeking an order for child support or spousal support payments for the period prior to the Sharma Order. She takes the position that the allowance provided and the respondent's payment of her share of the Opsal mortgage and strata fee expenses during that period were sufficient.
- [83] From the date of the Sharma Order, she submits that the Sharma Order should be affirmed, and that from May 2020 forward, child and spousal support should be based on her submissions regarding the respondent's actual income.
- [84] The claimant seeks compensation for 50% of the family property interest in all properties, including Group Properties and all Personal Properties other than Navio.
- [85] She submits that the respondent has incurred debts post-separation that are not family debts and/or which would be significantly unjust to hold her responsible. Navio is in this category, as are the respondents' dealings with Second + Main and Grayson. However, she agrees the respondent should be reimbursed for half of the closing costs for the Tower Green units.
- [86] The claimant seeks, if possible, a remedial order that will permit her to keep Opsal.

B. The Respondent

- [87] The respondent does not object to the claimant's position in respect of pre-Sharma Order child and spousal support.

- [88] He seeks a re-calculation of spousal and child support under the Sharma Order based on what he asserts to be his actual income. He takes the position that support should be set by reference to his annual income as shown on his PREC financial statement.
- [89] He does not dispute the claimant's entitlement to spousal support, but submits it should be for a defined term and conclude at the end of 2021.
- [90] On property division, he says the claimant owes him 50% of everything he has spent to maintain family property following separation, including Navio. He asks for a 50/50 division of the equity in Opsal and Navio as of trial.
- [91] With respect to Group Co and the Group Properties, he seeks an order that:
- a) there be a joint bank account in respect to their interest in Group Co;
 - b) the claimant be required to contribute 50% of any further capital investment required of him as a Group Co shareholder; and
 - c) on dissolution of Group Co, the claimant be entitled to 50% of the value of his Group Co shares.
- [92] He seeks a 50/50 division of all tax debt, including the tax debt of BM Co.
- [93] Finally, he wishes to retain Navio and seeks an order removing him from title on Opsal.

IV. Divorce

- [94] The parties meet the statutory requirements and there is no suggestion of collusion. The parties are divorced from each other, with the divorce to take effect on the 31st day after the date of this order.

V. Family Assets and Debt

A. Introduction

- [95] Family property includes all real and personal property that, on the date of separation, is owned by at least one spouse or in which at least one spouse has a beneficial interest: s. 84(1) (a) Family Law Act, S.B.C. 2011, c. 25 [FLA]. It also includes property or a beneficial interest acquired by a spouse after separation where the property or interest is derived from family property: FLA, s. 84(1)(b). A share or an interest in a corporation, and an interest in a partnership, association, organization, business, or venture is also family property: FLA, s. 84(2)(a) and (b).
- [96] Section 86 of the FLA defines family debt:
- 86 Family debt includes all financial obligations incurred by a spouse
- (a) during the period beginning when the relationship between the spouses begins and ending when the spouses separate, and

- (b) after the date of separation, if incurred for the purpose of maintaining family property.

B. Positions of the Parties

- [97] The respondent says the post-separation investments, expenditures, and losses in relation to family property should be equally shared. He says the parties agreed that he would continue to deal with the family property, including making new investments, and that he would build up a retirement fund for them both.
- [98] The claimant denies any agreement. She says the respondent's post-separation debts and losses are his alone. She submits that if the post-separation debts or losses arising from his conduct are family debts or involve a loss of family property, then an equal division would be significantly unfair, and that an unequal division under s. 95 of the FLA is warranted and/or a compensation order under s. 97 is appropriate.
- [99] As to the Group, the claimant seeks a one-eighth share of the net proceeds realized in each post-separation sale of a Group Property (e.g., a one-eighth share of 308 Richards). The respondent submits the claimant cannot claim against individual properties, but only against Group Co. In response, the claimant asserts that her family property interest cannot be defeated or lessened by the incorporation of the Group Co or the post-separation transfer of Group Properties to Group Co.

C. The Agreement Alleged by the Respondent

- [100] The agreement alleged is an inherently improbable one. Separated spouses rarely choose to remain financially conjoined. It is even less probable in cases where, as here, the separation was not amicable.
- [101] The claimant's exclusion from the family finances was a friction point towards the end of the relationship. She resented being told Group finances were none of her business. The respondent's berating her for using the joint account for groceries without his authorization was a last straw argument in terms of the attempted reconciliation effort. Further, beginning shortly after the separation, the claimant sought a separation agreement, which suggests a formal separation of family property.
- [102] I conclude that the alleged agreement was not made.
- [103] I agree that the respondent's dealings with the Second + Main Properties were his own and undertaken at his own risk. Similarly, assuming he and/or BM Co took a loan in order to invest in Grayson, the loan is not a family debt.

[104] The claimant has, however, at least condoned the respondent's post-separation dealings with the Tower Green units. She agrees it is appropriate for her to pay 50% of the closing costs. Condonation aside, it might be argued that she implicitly authorized the Tower Green closings given her signing of the 1401 Tower Green assignment form. Regardless, the concessions and conduct were specific to the Tower Green units and she gave no general authorization to act on her behalf.

D. The Group Properties

[105] There is no dispute that the respondent's Group interest is family property. The dispute is as to the nature of the interest held.

[106] The claimant was aware from the time of the Group's formation that the plan was to pool funds long-term pending a final proportional distribution to members. The respondent's interest was always a proportionate interest of the whole, and the claimant was aware that family property was being invested on that basis.

[107] The respondent never had, as Group member, a right to demand payment out to him of any proceeds on the sale of Group Properties. Accordingly, incorporation did not alter the nature of his interest. The nature of his interest remained the same post-incorporation, but his interest was then evidenced by shares rather than membership status.

[108] The claimant cannot claim against the sale proceeds of individual Group Properties. Rather, she is entitled to a 50% beneficial interest in the respondent's Group Co shares: J.S.F. v. W.W.F., 2015 BCSC 2375. A declaration of trust is made on those terms.

[109] The respondent is ordered to make best efforts to transfer one-half of his Group Co shares to the claimant as soon as possible.

[110] In the event that Group Co's articles of incorporation prohibit that notwithstanding best efforts, the respondent will continue to hold the claimant's 50% interest as her trustee (subject to the Trustee Act, R.S.B.C. 1996, c. 464, and the common law of trust).

[111] As a beneficial owner of Group Co shares, the claimant may be permitted to make an application under ss. 227, 228 and 232 of the Business Corporations Act, S.B.C. 2002, c. 57 [BCBCA]. I hereby find that she has appropriate person standing for purposes of those provisions.

[112] The respondent will also provide the claimant, as soon as possible and then on an ongoing basis for as long as he remains her trustee, with full disclosure regarding Group Co, including and without limitation, Group Co's finances, dissolution, and legal proceedings.

E. The Personal Properties

[113] The starting point under the FLA is that each spouse is entitled to a half interest in all family property and is equally responsible for family debt: s. 81(b) FLA.

i. Opsal

[114] The appraised value of Opsal as at time of trial is \$1,450,000.

[115] The equity in Opsal at the date of trial is to be divided equally between the parties.

[116] The evidence before me suggests that the equity in Opsal as of trial is \$844,700. However, the actual mortgage documents are not in evidence.

[117] From the date of the Sharma Order (May 19, 2019) to trial, each party is responsible for 50% of the amount owing on the Opsal mortgages and 50% of the strata fees (both units). The parties have advanced competing calculations and the evidentiary record is deficient. In particular, neither strata corporation account documents nor actual mortgage account documents have been adduced.

[118] Determination of the amounts paid and owing for Opsal are referred to the Registrar. The Registrar may also determine the equity in Opsal at date of trial based on the mortgage documents, if those are adduced before him. Absent a finding by the Registrar based on the mortgage documents, the equity in Opsal as of trial is deemed to be \$844,700.

ii. Navio

[119] The respondent borrowed money to pay for the remaining down payment on Navio at closing. He took a mortgage with a private lender in order to close. He says Navio is 50/50 family property and that the claimant owes him 50% of the mortgage and strata fee payments he has made to maintain Navio since June 2018.

[120] The claimant takes the position that the respondent closed the purchase of Navio on his own and that she is not responsible for contributing to its maintenance. She seeks 50% of that portion of the Navio deposit that can be traced to family property.

[121] The pre-sale agreement for Navio was entered into with the expectation that it would replace Opsal as the family residence. Shortly after the agreement was entered, the family's future was precarious. Prior to the closing, the family had dissolved and it was clear that Navio would not become the family residence.

[122] I find that the Navio pre-sale agreement was not a form of family property capable of being "maintained" post-separation within the meaning of the FLA, s. 86(a). The family property at separation was the pre-sale agreement: the "property" was the right to purchase Navio and the related contractual rights under the agreement.

[123] The parties did not agree to exercise the right to purchase. Rather, the respondent exercised the right unilaterally. He incurred debt in order to close on the purchase, and then made Navio his personal residence. Closing on Navio was not "maintaining" the pre-sale agreement.

- [124] Because he chose to buy Navio and chose to live in it, the respondent had to pay mortgage and strata fees out of pocket to maintain Navio (and not to maintain the family property, which was the pre-sale agreement itself).
- [125] Navio is not, in and of itself, family property. Rather, it is a property the purchase of which can, in part, be traced to family property.
- [126] On the evidence, \$284,990 of the funds deposited on Navio can be traced to family property: \$199,990 obtained from a line of credit against 907 Homer while the parties' were still together; and \$85,000 sourced from the same line of credit (with the available credit arising from the deposit of 2908 Trump Tower proceeds). The remaining funds for Navio were withdrawn from another account and cannot be traced back to family property. Thus, the claimant is entitled to \$142,495 in respect of Navio.
- [127] Had I found that the debt incurred to close on Navio and/or the expenses paid to maintain Navio did constitute family debt, I would have further found that an equal division of that debt to be significantly unfair: *Jaszczewska v. Kostanski*, 2016 BCCA 286 at para. 42. The unfairness would arise from the timing and circumstances of the purchase of Navio, as well as the expense of the mortgage taken and the respondent's failure to sell Navio pursuant to the Sharma Order.

F. Remaining Personal Properties

- [128] The following section outlines an equal division of the remaining Personal Properties. It includes amounts owing to the respondent for maintenance payments, to the extent I find any, to be owing by the claimant. It also includes amounts the claimant has agreed to pay the respondent.
- i. 907 Homer
- [129] 907 Homer was purchased in July 2013 in the respondent's name. It was rented out to a third party except for the period of August 2016 through May 2018. During that period, the respondent lived in the unit. The expense the respondent incurred in living in 907 Homer is not a family debt. He could have rented elsewhere and 907 Homer would have continued to earn rental income throughout: *P.J.M. v. S.B.M.*, 2016 BCSC 1798 at paras. 35 and 36.
- [130] The respondent claims for payments he made from May 2018 until the sale to cover a shortfall after rental income and seeks reimbursement for half. The claimed payments are not supported by his bank statements. I find that he has failed to establish this claim.
- [131] In June 2018, the respondent began collecting \$2,200 per month in rent until the tenant moved out in June 2019. The bank statements show a mortgage payment made on April 1, 2019, but none in May, June, and July. The last mortgage payment for \$1,406.94 was made on August 8, 2019, after which the property went into foreclosure. The bank records confirm the respondent continued to pay the strata fees until February 2020.

- [132] The respondent collected \$26,400 in rental income. The total mortgage paid from May 2018 to foreclosure is \$16,209.15 (when not including May, June, July 2019). The total strata fees paid from June 2018 until February 2020 amount to \$7,413.32. There is still no shortfall after deducting another \$1,619 for an insurance payment.
- [133] The respondent claims to have suffered a loss as a result of the unit being without a tenant from June 2019 through to sale. However, the respondent was not out of pocket, as he stopped paying the mortgage and allowed the property to go into foreclosure. He is not entitled to make any claim for the untenanted period. (In any event, I find the parties were equally to blame for the lack of a tenant.)
- [134] In April 2020, 907 Homer was sold. The mortgages and the outstanding property taxes were paid, resulting in \$119,819 in net sale proceeds. Each party is entitled to 50%, so the claimant is entitled to \$59,910.

ii. Edmonton House

- [135] The Edmonton House was sold in September 2017. The parties agree that the claimant was not given any of the proceeds.
- [136] There is a letter from the conveyancing lawyer confirming the net sale proceeds as \$180,286.41 along with a bank receipt showing that amount deposited on September 6, 2017.
- [137] The respondent does not dispute the amount of the proceeds realized, but says the parties' divisible share is only \$85,000 in total because his "sister was silent partner who managed the property" and he paid half of the proceeds to his sister. His assertion is disputed and the records do not support his position. He has provided an email sent from a "Yen Mach" to him that purports to confirm receipt of monies paid. I am not satisfied on the evidence that the email was sent by the respondent's sister, let alone that its contents are true.
- [138] The evidence before me does not satisfy me that a \$85,000 payment was owed to his sister, nor that it was made. Further, I cannot identify any of the transfers subsequently made from that account as being paid against family debt or applied to maintain family property.
- [139] The claimant is entitled to 50% of the net proceeds, which amounts to \$90,143.

iii. 2908 Trump Tower

- [140] 2908 Trump Tower was purchased in October 2013 with the respondent registered on title with a 1/3 interest. The property was sold in March 2017.
- [141] The respondent received about \$106,992 net as his share. Bank statements show that \$85,000 was deposited to a line of credit against 907 Homer (which was later used for a further deposit on Navio). The respondent placed \$4,300 into another line of credit, but there is no evidence as to how the \$4,300 was applied or as to where the remaining \$17,692 went. The claimant never received any of the proceeds.

[142] The respondent cannot account for \$21,992 of the proceeds. It is unaccounted for family property. The claimant is entitled to \$10,996.

iv. 1401 Tower Green

[143] In January 2018, the purchase of 1401 Tower Green was closed with BM Co as the owner.

[144] In February 2018, BM Co sold 1401 Tower Green, resulting in net sale proceeds of \$421,468. Some of the proceeds may have been applied toward Navio. However, Navio is not family property and I have determined the amounts put toward Navio that are traceable to family property. Thus, a 50/50 division of the 1401 Tower Green proceeds does not result in any double counting.

[145] The respondent paid \$30,848 in completion costs related to GST, property transfer tax, insurance, and legal fees to close on the purchase of 1401 Tower Green. The claimant agrees she should pay 50% of the completion costs. Accordingly, the claimant is entitled to \$210,734 - \$15,424 for a total of \$195,310.

v. 223 Tower Green

[146] The pre-sale agreement for 223 Tower Green entered into in September 2014 was in the respondent's name. In January 2018, the purchase of 223 Tower Green was closed with BM Co as the owner.

[147] The respondent paid \$35,507 in completion costs to enable 223 Tower Green to close. The claimant agrees she should pay 50% of the completion costs.

[148] The residential tenancy agreement for 223 Tower Green for the period of May 2018 to May 2019 provides for \$2,000 monthly in rent. Monthly mortgage payments were \$2,026.72 and strata fees were \$284.34. The bank statements commencing March 2019 show a monthly \$2,000 rent deposit up to August 2020.

[149] The respondent seeks reimbursement for half of the payments he made to cover the mortgage/strata shortfall (approx. \$300 per month), \$688 for insurance, and \$1,646 in property taxes. He also seeks reimbursement for half of the \$17,517.74 paid to the bank to get the property out of foreclosure.

[150] The mortgage of 223 Tower Green was in default between April and October 2019, resulting in the foreclosure, but the respondent continued to collect the \$2,000 rent during that period. As the rent was roughly equal to the mortgage payment, the foreclosure occurred because the respondent put the rent money elsewhere. He has not demonstrated where it went instead or that it was a reasonable priority. I am not satisfied the claimant should be responsible for any portion of the foreclosure expense.

[151] As of trial, 223 Tower Green was rented out to a third party and listed for sale. The respondent claims for half of the payments he made to cover the maintenance shortfall above the rental income. This is a valid claim.

- [152] The proceeds from the sale of 223 Tower Green are to be equally divided, but the claimant will owe the respondent 50% of his closing costs (\$17,753) and for half of the shortfall (i.e., over and above the rental income) paid to cover strata fees and mortgage payments.

G. Miscellaneous Property

- [153] There is no evidence that the \$12,500 withdrawn on the Joint LOC was used to maintain family property. The respondent owes the claimant that amount plus the interest she paid on the Joint LOC for a total of \$13,425.
- [154] The claimant suggests that the 2007 Triumph Speed Triple motorcycle has a value of about \$4,000 based on comparables. The respondent testified that the motorcycle has not been kept up. I am satisfied that it is worth at least \$2,500 and thus the claimant is owed \$1,250.
- [155] The parties have not provided evidence regarding the B2B accounts beyond what the testimony summarized above. The testimony was that the accounts are currently debts. As I am not in position to make any further assessment of their value or potential value, I find they should be regarded as debts. On that basis, the respondent will pay the claimant \$3,000 to even their B2B debts.
- [156] Neither the claimant nor the respondent argued that there should be any adjustments made to account for dealings with the JX35. I accept the claimant's Autotrader comparative value evidence as sufficient for valuing the FX35 at about \$11,000. As the claimant has retained the FX35, the respondent is owed \$5,500.
- [157] The respondent is entitled to \$87.50 from the claimant for the Tax Free Savings Account.
- [158] The cumulative result of the findings in the five paragraphs above in respect of miscellaneous property is that the claimant is owed \$12,088.
- [159] The respondent's SFU pension is a family asset and should be divided in accordance with the FLA with the relevant dates being September 1998 and December 2016.
- [160] The respondent testified that there is a bicycle rack in the Opsal storage that is his property. The claimant did not object to his request to have it. The bike rack will be the respondent's property and he is to have possession forthwith.

H. Tax Debt

- [161] The respondent submits that any and all taxes owing as of the date of trial should be treated as family debt.
- [162] The onus is on the respondent to demonstrate that the tax debts are family debts: *Chang v. Chang*, 2020 BCSC 1783 at para. 85. The claimant has conceded the taxes owing for the pre-separation period are family debts.

[163] The respondent claims BM Co's tax debt of \$44,207 as a family debt. The claimant disputes liability for any BM Co tax debt. BM Co did not exist during the relationship. The burden is on the respondent and the evidence before me does not satisfy me that the claimed BM Co tax debt was incurred to preserve or maintain family property: *Chatha v. Uppal*, 2018 BCSC 6 at para. 309.

[164] The following taxes are accepted as family debts:

Debt

Amount

JM

Owes

Taxes owing 2015 and 2016 by the respondent, Bao Mach (BM), including balance and interest

\$96,173

\$48,090

Taxes owing 2015 and 2016 and paid by Bao Mach for the claimant Jennifer Mach (JM)

\$12,806

JM to pay but was paid by BM post-separation

\$6,403

Taxes owing PREC year end January 2017 (and including 2017)

\$68,326

Paid by BM post-separation

\$34,160

[165] Thus, the claimant owes the respondent \$88,653 in respect of family debt consisting of personal and PREC taxes.

[166] The respondent's closing submissions lists a debt of \$40,000 owing to Jasmine Bang as family debt. This apparently relates to money used to invest in Grayson. Grayson is not family property. In any event, the evidence is insufficient to establish that the \$40,000 debt claimed was actually incurred.

VI. Support Issues

A. Parties' Positions

- [167] The respondent does not dispute the claimant's entitlement to spousal support, but argues it should cease at the end of 2021. He submits five years is appropriate as he had only been a realtor for six years at separation. He also seeks an order giving him spousal support should his income drop in the future.
- [168] I have already addressed the respondent's assertions regarding the claimant's return to employment and her actual earning capacity.
- [169] The interim support terms under the Sharma Order were on a without prejudice basis. The respondent seeks a reassessment.
- [170] The respondent submits that his estimated 2020 income, based on his 2019 income, is \$183,162. He submits that his income should be determined solely by reference to his PREC financial statement, arguing that it is the most accurate record. In the DivorceMate calculations provided by the respondent for 2019, he uses the income of \$183,162 for himself and \$44,221 for the claimant (which appears to be her net income from her 2019 tax return), and for 2020 he uses the income of \$183,162 for himself and \$56,000 for the claimant (her anticipated annual salary at Icon).
- [171] The claimant submits that there should be no reassessment of the support under the Sharma Order. She says that ongoing child and spousal support should then commence May 2020.
- [172] The claimant provided a DivorceMate calculation for 2020 setting out an income for the claimant of \$35,886 (which is her employment income for 2019), and an income for the respondent of \$209,000 (which is the amount of taxable Canadian dividends on the respondent's 2019 tax return). I note, however, that using the dividend income as suggested by the claimant would actually produce a Federal Child Support Guidelines, SOR/97-175 [Guidelines] income of \$151,449 (i.e., after dividend adjustment in accordance with Schedule III of the Guidelines).

B. No Retroactive Support Sought

- [173] The Sharma Order provided for spousal support and child support retroactive to March 2019. The claimant concedes the allowance provided and the respondent's payments covering her share of the Opsal maintenance cost in the period prior to the Sharma Order approximate the spousal and child support that would have been payable in that period. She does not seek retroactive support.
- [174] As the respondent's payments were evidently greater than his Guidelines child support obligations, the concession is appropriate.

C. Parties' Incomes

[175] Both parties have advanced arguments against the use of their line 150 incomes as provided for under s. 16 of the Guidelines.

[176] In *Sullivan v. Struck*, 2015 BCCA 521, the Court of Appeal set out the following framework for determining a party's income:

[67] Section 15 of the Guidelines provides that the income of a spouse is determined in accordance with ss. 16-20. A court should begin with finding the spouse's line 150 income from his or her tax return. The next step is to determine whether any of the specific considerations in the subsequent sections apply. In *Vincent v. Vincent*, 2012 BCCA 186, Madam Justice Huddart summarized the process for determining income. Starting at para. 35 she wrote:

[35] All determinations of child support begin with finding the spouse's Line 150 income, a relatively straight-forward step one. The second step is to make whatever adjustments to that amount are required by Schedule III. Once these two steps are completed, the court must look to sections 17 to 20, to determine whether any of the exceptions set down in those provisions applies, and, if so, what effect they should be given on the facts of the case.

...

[37] Section 18 provides discretion to deal with the situation where a spouse is in a position to manipulate income in his or her capacity as shareholder, director or officer of a corporation, such that a person's income under s. 16 does not fairly reflect all the money available to that spouse for the payment of child support. It permits the inclusion of pre-tax corporate income and benefits paid to non-arm's length persons.

[38] Section 19 addresses situations where the spouse's disclosed income does not fairly reflect what should be paid in child support by permitting imputation of income. It permits the imputation of income in a variety of situations, including income which is tax exempt, under-utilized capital investments, and when there is a failure to provide income information.

i. The Claimant

[177] The claimant's line 150 incomes are:

2017

\$11,054 [includes RBC cheque]

2018

\$7,407

2019

\$46,417 [includes capital gains]

[178] For 2019, the claimant submits that her income should be calculated as \$35,886, which is her employment income and excludes other sources of income she received, including taxable dividends and taxable capital gains.

[179] The starting point should be the claimant's line 150 income, adjusted pursuant to Schedule III of the Guidelines. The breakdown of the claimant's 2019 line 150 income from her tax return is as follows:

Employment income

\$35,886.00

Taxable dividends

\$3,094.90

Taxable capital gains (B2B)

\$6,037.00

Interest and other investment income

\$84.15

RRSP Income (Home Buyer's Plan)

\$1,334.00

Business income (loss)

-\$18.48

[180] The RRSP income is excluded as the repayment of a loan under the Home Buyer's Plan agreement rather than actual income: *Soleimani v. Melendez*, 2019 ONSC 36 at para. 9. I agree that the taxable capital gains from B2B should be excluded. Accordingly, the claimant's annual Guidelines income for 2019 is \$38,194 (with the exclusions and adjusting for dividends in accordance with Schedule III).

[181] For 2020, the claimant submits that her income should be \$35,886 based on her 2019 employment income. The claimant's annual salary from her Icon employment is \$56,000, therefore I find that her Guidelines income for 2020 should be \$56,000.

ii. The Respondent

[182] According to the respondent's five year tax summary (Federal) statement, the respondent's personal tax line 150 incomes are:

2016

\$271,980 (+ \$30,000 income splitting with claimant)

2017

\$314,256

2018

\$123,044

2019

\$212,446

[183] The respondent estimates his 2020 income as \$183,162. He says his income will be lower on a go-forward basis as he has 50% custody and this will negatively impact his productivity. I do not accept that. The respondent can arrange childcare in order to attend to work matters. The shared parenting arrangement has also been in place since July 2018, so he has already had time and opportunity to adapt.

[184] The respondent is positioned to be paid a significant number of commissions from Rennie and Associates. The commissions become payable as and when pre-sale agreements he worked on as selling agent actually close on purchase. The respondent says these commissions are uncertain and may amount to naught. While a few may not close, I am satisfied that the bulk of them will. The buyer party has considerable financial motivation to close. The respondent has established as much in evidence by his own conduct.

[185] The claimant uses an annual income of \$209,000 for the respondent in her DivorceMate calculations for 2020. This is the amount of taxable Canadian dividends on the respondent's 2019 tax return. She submits that the line 150 income is the starting point, but that income can also be imputed pursuant to s. 19 of the Guidelines. For purposes of imputation, she points to the option of averaging the last three years income under s. 17 of the Guidelines and s. 18 of the Guidelines which deals with the income of a shareholder, director or officer of a corporation. She also asserts that the respondent's business expenses are inflated and submits that they should be added back into income.

[186] Notwithstanding her general submissions regarding imputation, the claimant made no specific submissions. The DivorceMate calculation she has provided uses the taxable dividends reported on the respondent's tax return, which includes dividends from PREC and other investments, but excludes taxable capital gains and RRSP income.

[187] The respondent is a self-employed real estate agent who receives his income through his PREC as sole shareholder. In the circumstances, the appropriate starting point is the pre-tax income of the PREC pursuant to s. 18 of the Guidelines: *Zandbergen v. Craig*, 2017 BCSC 487.

[188] The respondent's revenues according to his PREC unaudited financial statements are as follows:

Gross Revenues

Expenses

Net Revenues

2015

\$267,163

\$83,010 (31%)

\$184,153

2016

\$343,631

\$106,423 (31%)

\$237,208

2017

\$297,640

\$81,777 (27%)

\$215,863

2018

\$354,714

\$90,894 (26%)

\$263,820

2019

\$244,840

\$61,678 (25%)

\$183,162

[189] The respondent's gross revenues for 2019 according to his PREC financial statement were \$244,840. After deducting approximately \$61,678 in expenses, which is 25% of his gross revenues, the net revenues were \$183,162. This is the amount of income he says should be used to calculate his 2019 and 2020 support obligations.

[190] The claimant argued that the respondent inflates his expenses by claiming personal expenses as business expenses. This was based on her experience collating his business expenses prior to 2016. She says the expenses she tracked often included personal expenses, such as gift cards intended for family use.

[191] The respondent has not detailed the expenses deducted. I cannot determine the reasonableness of specific expenses. However, I accept that a real estate agent has legitimate business expenses for deduction from the gross revenues. The percentage of business expenses deducted from his income decreased in the years following those where the claimant helped track his expenses. In my view, 25% in deductions is within a reasonable and expected range. I am not prepared to add back in any business expenses.

[192] The breakdown of the respondent's line 150 income (\$212,446.16) from his 2019 tax return is as follows:

Taxable dividends

\$209,006.68

(\$207,575 from PREC, \$595.43 from RBC, and \$836.25 from Franklin Templeton)

Taxable capital gains

\$2,875.48

RRSP income (Home Buyer's Plan)

\$564

[193] I would add to the pre-tax income the additional dividends the respondent received on his 2019 tax return, and exclude the taxable capital gains and the RRSP (HBP) income.

[194] Therefore, the respondent's annual Guidelines income for 2019 is \$183,162 pre-tax income from his PREC and \$595.43 and \$836.25 in dividends, which amounts to \$184,200 (after adjusting the dividends pursuant to Schedule III). This is also his Guidelines income for 2020.

[195] I do not think a three-year average is appropriate. The respondent has been moving away from his previous focus on pre-sales. While the commissions yet to be paid through Rennie and Associates can be expected to buffer any impact of that, the real estate market remains subject to fluctuation: *Bell v. Bell*, 1999 BCCA 497 at para. 12.

[196] However, I am ordering a robust disclosure of financial documents, as set out below, to occur every year by June 30 to enable the adjustment of child support every July 1 to account for fluctuating income. Any failure to provide the full disclosure ordered will provide a basis for adverse inferences and an imputation of income under future applications.

D. Child Support

[197] The parties are agreed that child support should be calculated based on shared parenting. In a shared parenting arrangement child support is determined pursuant to s. 9 of the Guidelines:

9 If each spouse exercises not less than 40% of parenting time with a child over the course of a year, the amount of the child support order must be determined by taking into account

- (a) the amounts set out in the applicable tables for each of the spouses;
- (b) the increased costs of shared parenting time arrangements; and
- (c) the conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought.

[198] Both parties' submissions appear to contemplate a simple set off. In any event, I conclude that a simple set off approach is appropriate: *Contino v. Leonelli-Contino*, 2005 SCC 63. There is no evidence suggesting that fixed or variable costs warrant adjustments or that the result under a simple set off is not an outcome that is fair in all the circumstances.

[199] For the period of March 1, 2019 to December 31, 2019, based on the respondent's Guidelines income of \$184,200 and the claimant's Guidelines income of \$38,194, the respondent's obligation is \$2,563 per month and the claimant's obligation is \$610 per month. After set off, the respondent is required to pay the claimant \$1,953 per month for a total of \$19,530 for this ten month period.

[200] For the period of January to April 2020, based on the respondent's Guidelines income of \$184,200 and the claimant's Guidelines income of \$56,000, the respondent's obligation is \$2,563 per month and the claimant's obligation is \$869 per month. After set off, the respondent is required to pay the claimant \$1,694 per month for a total of \$6,776 for this four month period.

[201] Thus, the total amount of child support payable to date of trial is \$26,306.

[202] With respect to ongoing child support, commencing May 1, 2020, the respondent must pay the claimant the set off amount, subject to annual adjustment as set out below, for so long as the children remain children of the marriage.

[203] The parties will exchange the following financial information by June 30 of each year for purposes of an annual adjustment in child support:

- a) A copy of the party's personal income tax return filed for the year;
- b) All T4s and T5s when available;
- c) A copy of the party's notice of income tax assessment or reassessment when available;
- d) A copy of any corporate income tax return for the same year if the party operated a company in any of these years and the notice of assessment for the company return;

- e) A copy of the three most recent statements of earnings indicating the total earnings paid to date, including overtime, or where such statement is not provided by the employer a letter from the employer setting out the total earnings paid to date including overtime and the rate of pay and annual salary or remuneration;
 - f) Copies of financial statements of the party for any business operated by the party, including:
 - i. A statement showing a breakdown of all salaries, wages or management fees or benefits paid;
 - ii. The previous year's general ledger;
 - iii. A sale sheet showing sales and commission for the previous year for sales completed and for sales to be completed or deal to be paid at a future date and upcoming commission report for the party or their personal corporation or any other company;
 - iv. Copies of receipts for expenses written off as business expenses if requested by the other party.
- [204] The parties will adjust the amount of support once per year on July 1, commencing July 1, 2021. The parties may apply to the court for a determination of the amount payable if they are unable to agree on the appropriate adjustment.

E. Section 7 Special Expenses

- [205] Neither party addressed Guidelines s. 7 special expenses in their submissions.
- [206] The parties will bear s. 7 special expenses in accordance with their respective incomes.
- [207] For 2020, the special expenses apportioning under DivorceMate is 65% for respondent and 35% for the claimant.

F. Spousal Support

- [208] The Court of Appeal discussed entitlement for spousal support in *Parton v. Parton*, 2018 BCCA 273,
- [38] The conceptual bases for entitlement to spousal support are well known: compensatory support, non-compensatory support (needs based) and contractual support. In this case, the judge found entitlement based on both compensatory and non-compensatory principles, grounding a spousal support award that is "single and indivisible": *Zacharias v. Zacharias*, 2015 BCCA 376 at para. 39. He also found that Ms. Parton was entitled to indefinite spousal support, citing the SSAG and *Chutter v. Chutter*, 2008 BCCA 507, leave to appeal to SCC refused, [2009] S.C.C.A. No. 41.
- [39] In *Chutter*, Justice Rowles described the underlying goals of compensatory and non-compensatory spousal support, namely, equitable sharing of the economic consequences of a marriage or its breakdown (compensatory support) and narrowing the gap between the needs and means of the spouses (non-compensatory support). In doing so,

she explained that compensatory support provides redress for economic disadvantage arising from the marriage (such as diminished earning capacity and sacrificed career opportunities to take on child care responsibilities) or the conferral of an economic advantage upon the other spouse (such as contributions to enhanced career development). Citing *Yemchuk v. Yemchuk*, 2005 BCCA 406 and *Tedham v. Tedham*, 2005 BCCA 502, she also explained that, for purposes of non-compensatory support, at least for long marriages, "need" is generally measured against the marital standard of living: paras. 50-61. As this Court held in *Yemchuk*, while equalization of the parties' standards of living is not a stated objective of spousal support, in long-term marriages equality of standard of living may well be the just result: para. 50.

- [209] I am satisfied that the claimant is entitled to both compensatory and non-compensatory spousal support. I am not persuaded that it would be appropriate to set a termination date at this time. Nor are there any circumstances that would make a review order appropriate. The order will be for indefinite spousal support.
- [210] The children are young and the claimant has a strong compensatory claim, indicating that the payment period is likely to be of considerable duration. While the claimant earns far less than the respondent, she has already made strides in terms of re-establishing herself in the workplace, and does not require further education. I find the mid-range level appropriate in the circumstances. I note that the end result is not a significant departure from the result that would be obtained under an equal NDI approach.
- [211] Accordingly, for the period of March 1 to December 31, 2019, the respondent owes the claimant \$2,940 per month in spousal support for a total of \$29,400. For the period of January to April 2020, the respondent owes her \$2,314 per month for a total of \$9,256.
- [212] The total spousal support payable to date of trial amounts to \$38,656.
- [213] Commencing May 1, 2020, the respondent must pay the claimant \$2,314 per month in spousal support on an indefinite basis.
- [214] The respondent is to be credited with the amounts paid through garnishment by the FMEP, and with the \$1,000 payment voluntarily made under the Sharma Order. I leave it to the parties to make an adjustment for the \$20,000 in trust with the Director of Maintenance Enforcement at the date of trial.

VII. Summary

- [215] Subject to s. 12 of the Divorce Act (Canada), R.S.C. 1985, c. 3 (2nd Supp.), the parties are divorced from each other, with the divorce to take effect on the 31st day after the date of this order.
- [216] With regard to Group Co:

- a) There is a declaration that the claimant has a 50% beneficial interest in the respondent's Group Co shares.
- b) The respondent is ordered to make best efforts to transfer one-half of his Group Co shares to the claimant as soon as possible.
- c) If a transfer is prohibited by Group Co's articles of incorporation notwithstanding best efforts, the respondent will continue to hold the claimant's interest as trustee.
- d) The claimant has appropriate person standing for purposes of making an application under ss. 227, 228 or 232 of the BCBCA.

[217] With regard to Opsal:

- a) The Opsal mortgage and strata amounts paid and owing under the Sharma Order are referred to the Registrar for determination.
- b) The Registrar may determine the equity in Opsal at date of trial based on the actual mortgage documents, if those are put before him. If not, then the equity is deemed to be \$844,000.

[218] With respect to family property other than Opsal:

- a) Navio: the claimant is entitled to \$142,495;
- b) 223 Tower Green: the claimant is entitled to 50% of the net sale proceeds but will reimburse the respondent \$17,753 for closing costs and for half of the amounts he expended on the mortgage and strata payments not covered by the rental income;
- c) Edmonton House: the claimant is entitled to \$90,143;
- d) 2908 Trump Tower: the claimant is entitled to \$10,996;
- e) 1401 Tower Green: the claimant is entitled to \$195,310;
- f) 907 Homer: the claimant is entitled to \$59,910;
- g) the claimant is entitled to \$12,088 pursuant to the findings in the "Miscellaneous Property" section;
- h) the respondent's SFU pension is divided in accordance with the pension provisions of the FLA, with the relevant dates being September 1998 through December 2016 (inclusive); and
- i) the respondent is entitled to the bicycle rack.

[219] With regard to tax debts constituting family debts, the claimant owes the respondent \$88,653.

[220] With regard to child support and pursuant to the FLA:

- a) To trial, the respondent ought to have paid \$26,306;

- b) Commencing May 1, 2020, the respondent must pay the claimant \$1,694 per month for as long as the children are eligible for support or until further agreement of the parties or Court order;
- c) The parties will exchange the financial information outlined in this decision by June 30th of each year for an annual adjustment to take effect the following day, July 1st; and
- d) The parties may apply to the court if they are unable to reach an agreement on the amount payable on adjustment.

[221] With regard to spousal support and pursuant to the FLA:

- a) To trial, the respondent ought to have paid \$38,656;
- b) Commencing May 1, 2020, the respondent must pay to the claimant \$2,314 per month in spousal support indefinitely.

[222] The respondent is to be credited with the FMEP garnishments, including accounting for the \$20,000 held in trust with the Director of Maintenance Enforcement at the time of trial and for the \$1099 voluntarily support payment.

[223] Any overpayment in support is to be set off against the monies owing to the claimant in respect of the division of property.

[224] It will be necessary for both parties to re-file income taxes the years 2019 forward to account for the outcome of this decision with regard to child support and spousal support.

[225] After determining the Opsal-related matters referred to the Registrar, the Registrar will make a final tabulation of the amounts owing under this judgment.

[226] With regard to the matters referred to the Registrar:

- a) The reference is pursuant to Supreme Court Family Rule 18-1(2), and the result of the Registrar's assessment will be certified and binding on the parties; and
- b) The parties are to appear before the Registrar for a pre-hearing conference prior to setting any matters for hearing.

VIII. Costs

[227] The parties will bear their own costs.

"Tucker J."

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