

CANADA / JUDGMENT

Mazanek v. Mazanek

2022 BCSC 1267

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Supreme Court of British Columbia

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2022 BCSC 1267 Mazanek v. Mazanek

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Mazanek v. Mazanek,

2022 BCSC 1267

Date: 20220725

Docket: E23263

Registry: Dawson Creek

Between:

Tanya Lynn Mazanek also known as Tanya Lynn Vipond

Claimant

And

Douglas Lesley Mazanek

Respondent

Before: The Honourable Justice E. McDonald

Reasons for Judgment

Counsel for the Claimant:

N.R. Bauder

The Respondent, appearing in person:

D.L. Mazanek

Place and Date of Trial/Hearing:

Dawson Creek, B.C.

May 10-13, 2022

Place and Date of Judgment:

Vancouver, B.C.

July 25, 2022

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Introduction

- [1] The main issue in this family law proceeding concerns whether the parties reached a binding separation agreement on March 26, 2020 (the "Agreement").
- [2] The claimant, Ms. Tanya Vipond, and the respondent, Mr. Douglas Mazanek, began living together in 1998 and married on August 4, 2007. For clarity, I will refer to the parties and the other witnesses who testified by their first names. The parties separated on July 1, 2017. They have two children together, C.M., who is presently 18 years old, and T.M., who is presently 15 years old.
- [3] Tanya submits that the Agreement is valid and binding. She asks to have the Agreement upheld and enforced. Tanya also seeks orders requiring Douglas to pay her the property equalization payment contemplated in the Agreement, outstanding child support, and occupational rent. Failing payment of the amounts due, Tanya seeks a number of declarations to give effect to the terms of the Agreement.
- [4] Douglas submits that the Agreement should be set aside on the grounds that Tanya delayed and avoided signing the Agreement until such time as the funds for the equalization payment were no longer available.

- [5] Assuming that the Agreement is set aside, Douglas requests an unequal division of the family property and debt. Douglas seeks to reduce Tanya's entitlement to family property to reflect his allegation that she has no entitlement to the lands where the parties lived and she made no contribution towards the mortgage payments.
- [6] For the reasons that follow, I have concluded that the Agreement is binding.

Background

- [7] When the parties started living together, they resided in a mobile home located in Dawson Creek, British Columbia. Douglas' parents, William and Deborah Mazanek, purchased the mobile home from Tanya's father.
- [8] Eventually, Tanya and Douglas decided to move to Tomslake, British Columbia, bringing the mobile home with them. Tomslake is where William and Deborah live, and it is where Douglas grew up.
- [9] William and Deborah agreed to let Douglas and Tanya move onto a five-acre area of the property that William and Deborah owned in Tomslake. The property, including the area where Douglas and Tanya lived, had a legal description of:

PID: 014-143-500

The south east ¼ of Section 9, Township 25, Peace River District, except plans 2974 and H661 (the "Property")

- [10] William and Deborah lived in a house located on different area of the Property about five minutes away from where Douglas and Tanya moved. The Property is rural and large, and it is where William and Deborah operate their farming and other businesses.
- [11] Tanya and Douglas lived on the Property until they separated. All of the witnesses who testified agreed that Tanya did some work initially, and over the years, maintaining and improving the Property. For example, Tanya helped with miscellaneous farm chores on the Property, and she planted and maintained the garden on the area where she and Douglas lived.
- [12] Both Tanya and Douglas worked outside the home during the majority of their relationship. Tanya worked as a payroll and accounts receivables clerk for local companies, except for periods when she was on maternity leave or staying home to care for their young children.
- [13] Douglas worked driving trucks, and he attended school to become a qualified welder. Douglas was sometimes an employee, and sometimes, he operated his own business, either through a corporation or as a sole proprietor. Tanya assisted Douglas with the invoices and financial paperwork for his businesses.

- [14] As Tanya and Douglas expanded their family, it became apparent that they were outgrowing the mobile home. In 2006, Tanya and Douglas decided to purchase a new "triple-wide" modular home from a manufacturer in Alberta (the "New Home").
- [15] Tanya and Douglas were unable to qualify for the financing to purchase the New Home. They asked William and Deborah for assistance. William and Deborah agreed to help Douglas and Tanya purchase the New Home.
- [16] Tanya and Douglas purchased the New Home with funds borrowed from Farm Credit Canada ("FCC"). William and Deborah were existing customers of FCC. The New Home was transported to the Property and assembled on site. The New Home is not a registered mobile home.
- [17] On July 28, 2006, Farm Credit Canada registered a \$215,000 mortgage against the Property. The borrowers were listed as Tanya, Douglas, William, and Deborah. Tanya and Douglas covered all the mortgage payments on the New Home from a joint account they held together and Tanya estimated they paid \$2,000 as monthly mortgage payments. All witnesses agree that William and Deborah's only involvement was to offer the Property as security.
- [18] As part of the New Home purchase, Tanya and Douglas were added as joint tenants on the Property. This meant that after July 2006, the title to the Property was held by William, Deborah, Douglas, and Tanya as joint tenants. Both William and Deborah testified that they added Tanya and Douglas to the title to assist them with purchasing the New Home. William and Deborah paid the annual property tax for the Property.
- [19] For many years, the living arrangements on the Property went smoothly. The parties enjoyed their lifestyle in Tomslake, and William and Deborah enjoyed having their family, especially their grandchildren, close by.
- [20] The parties prospered during their relationship, and they made various improvements to the Property, such as constructing out-buildings on the area of the Property where they lived. They also acquired vehicles, equipment, and recreational items, such as all-terrain vehicles and snowmobiles.

Issue #1 - Is the Agreement Binding?

- [21] The Family Law Act, S.B.C. 2011, c. 25 [FLA], includes various provisions dealing with written agreements between parties. It is not disputed that the Agreement is a written agreement within the meaning of s. 1 of the FLA.
- [22] Section 6 provides that parties may make an agreement to resolve a family law dispute. The Agreement purported to resolve the issues in the parties' family law dispute, including dividing family property and debt under s. 92.

- [23] The court's jurisdiction to set aside the parties' written agreement respecting property division is not unlimited, and a court may only set aside a written agreement if satisfied that one of the following circumstances described in s. 93(3) existed when the parties entered the agreement:
- (a) a spouse failed to disclose significant property or debts, or other information relevant to the negotiation of the agreement;
 - (b) a spouse took improper advantage of the other spouse's vulnerability, including the other spouse's ignorance, need or distress;
 - (c) a spouse did not understand the nature or consequences of the agreement;
 - (d) other circumstances that would, under the common law, cause all or part of a contract to be voidable.
- [24] Section 93(4) allows the court to decline to act under s. 93(3) if on all the evidence, the court would not have replaced the agreement with an order that is substantially different.
- [25] Pursuant to s. 93(5), a court may still set aside a written agreement even if all the conditions in s. 93(3) are unmet if the court determines the written agreement is significantly unfair after considering the following factors:
- (a) the length of time that has passed since the agreement was made;
 - (b) the intention of the spouses, in making the agreement, to achieve certainty;
 - (c) the degree to which the spouses relied on the terms of the agreement.
- [26] After the parties separated, they attended a mediation in April 2019. The mediation resulted in a memorandum of understanding dated May 30, 2019 (the "MOU"). The parties used the MOU as the framework for the Agreement that they later signed.
- [27] There is no dispute that both parties took the MOU to their respective counsel with a view to ultimately drafting an agreement. They both understood that once an agreement was reached, they would need to sign it.
- [28] On July 24, 2019, Douglas' counsel provided him with a draft separation agreement which Douglas then provided to Tanya. Meanwhile, William and Deborah spoke with a representative of their bank about borrowing against the Property to raise funds so that Douglas could pay out Tanya.
- [29] On July 16, 2019, the bank approved William and Deborah's financing request. This approval was extended numerous times, including up until June 9, 2020. However, ultimately, the approval was never acted upon, and no loan proceeds were ever advanced.

- [30] From July 2019 to March 2020, counsel for Douglas and Tanya corresponded back and forth, including about financial disclosure issues. This back-and-forth continued until Douglas' lawyer prepared the final version of the Agreement.
- [31] The Agreement that the parties reached is comprehensive. It includes terms setting out valuations and dividing family property and debt. It defines the "Family Residence" as the land located at "south east ¼ of section 9 township 25 Peace River District, except Plans 2974 and H661", noting that this land is registered in the names of Tanya, Douglas, William, and Deborah.
- [32] The Agreement sets out the basis for the valuation of the New Home and Property as follows (at para. 1.11):
- 1.11 The value of the Family Residence has been determined by appraisal of Ron McLeod (RMC Appraisals) in November 2018 at \$590,000. As between Douglas and Tanya and for the purpose of arriving at an equalization payment by Douglas to Tanya, the following values have been used: (1) residence \$286,000.00; (2) shop \$180,000.00 and (3) land \$124,000.00. All of the value of the residence and shop is assigned to Douglas and Tanya and one-half of the land value is assigned to Douglas and Tanya.
- [33] The Agreement further notes that Tanya and Douglas agree that they are jointly responsible for the entire amount of \$132,000 balance owing on the mortgage for the New Home.
- [34] The Agreement also includes terms regarding equal parenting time and child support. Under those terms, Douglas agrees that he will pay Tanya child support of \$500 per month commencing April 1, 2020. The parties also agree to share special or extraordinary expenses for the children as they occur.
- [35] Upon signing, the Agreement stipulates that Tanya will transfer her interest in the Property to the remaining joint tenants, and concurrent with that transfer, Douglas will ensure the mortgage is paid out, cancelled, and replaced with a mortgage that does not include Tanya as a borrower or guarantor. The Agreement also provides that Tanya will be paid compensation for her interest in the Property as part of the \$225,000 equalization payment from Douglas.
- [36] The Agreement contains an "entire agreement" clause, and it stipulates that there are "no representations, collateral agreements, warranties or conditions affecting this Agreement".
- [37] Both parties signed the Agreement. Tanya signed it on March 23, 2020, and Douglas signed it on March 26, 2020. Douglas testified that when he signed the Agreement, he was suffering from health problems. However, he admits that he reviewed the Agreement with his counsel before he signed it. That is confirmed by the Agreement which states that Douglas received independent legal advice. Douglas agreed that when he signed the Agreement, he understood that Tanya would, among other things, sign away her interest in the Property and he would pay her \$225,000 forthwith.

- [38] Douglas testified that he did not pay Tanya the \$225,000 equalization payment because she delayed a long time in signing the Agreement. He said that by the time Tanya signed the Agreement, his parents had decided to put the financing "on hold".
- [39] William and Deborah testified that they knew Douglas and Tanya had separated and they were negotiating something to resolve their issues. They also confirmed knowing that Douglas had agreed to pay Tanya money in exchange for her interest in the Property.
- [40] Deborah testified that when Douglas told her about the Agreement, she thought the \$225,000 equalization payment was far too high. However, Deborah understood that she and William would borrow against the Property to obtain the funds so that Douglas could pay Tanya out. Both William and Deborah confirmed that at some point, they were prepared to assist Douglas by borrowing against the Property so that Tanya could be paid out.
- [41] William testified that in early 2020, with the onset of the COVID-19 pandemic, he and Deborah realized that business was slowing down and they could not afford to borrow additional funds. During the period when Douglas and Tanya were negotiating the Agreement, William agreed that he called the bank more than once to extend the financing that he had arranged.
- [42] William could not recall the date when the final extension of the financing expired. However, he agreed the financing could have been available until June 9, 2020. William explained that he and Deborah decided against further borrowing because they were concerned they could not service the payments.
- [43] In April 2020, counsel for Douglas provided a land title transfer form for Tanya to sign, transferring her interest in the Property to Douglas. Tanya signed the transfer form, and it was delivered to Douglas' lawyer on an undertaking. Eventually, when it became apparent that no equalization payment would be made, Douglas' lawyer returned the unentered transfer form to Tanya's counsel.
- [44] While Douglas had no access to refinancing monies arranged by his parents, he did deal with other valuable assets. For example, after he entered into the Agreement, Douglas sold assets, such as a Mack Truck, to his parents' company. The company assumed the balance of the loans registered against these assets.
- [45] Douglas submits that these assets had declined in value and their value did not exceed the outstanding loan balances. However, Douglas admits there were no independent appraisals to establish the value of any of the assets transferred to his parents' company. He agrees Tanya received no money as a result of these sales.
- [46] After the sale of these assets, Douglas started working driving trucks for his parents' company in exchange for 25% of the revenue he generates.

- [47] Douglas decided that he could not afford to pay Tanya the property equalization payment. He asks the court to set it aside and to ignore the division of property that the parties agreed to.
- [48] The question I must address is whether any of the circumstances listed in s. 93(3)(a)-(d) existed at the time the Agreement was entered into which might justify setting it aside.
- [49] In seeking to set aside the Agreement, the main submission Douglas made was that at the time he signed the Agreement, he did not understand its nature or consequences: FLA, s. 93(3)(c). Specifically, Douglas submits that his parents never transferred Tanya any interest in the Property when Tanya was added to the title as a joint tenant.
- [50] Douglas states that when he signed the Agreement, he was not advised, nor did he realize, that it effectively treated Tanya as if she were part-owner of the Property. However, prior to signing the Agreement, Douglas received independent legal advice. When he signed the Agreement, he described himself as relieved to resolve the financial issues with Tanya. He was anxious to move on with his life.
- [51] In my view, when Douglas signed the Agreement on March 26, 2020, he knew that he was obliged to pay Tanya the equalization payment. Douglas said that when he signed the Agreement he was ill, but there was no evidence that, for example, he lacked capacity to sign the Agreement.
- [52] There is no term in the Agreement making Douglas' obligation to pay the equalization payment conditional upon, for example, William and Deborah borrowing funds to make the payment. Such a condition could have been included. However, no such condition was ever proposed, let alone agreed to.
- [53] In the meantime, William and Deborah testified that based on their discussion with Douglas, they understood that Douglas could not raise the money by himself to pay Tanya out. They understood they needed apply for new financing on the Property to raise the funds to pay Tanya out.
- [54] William and Deborah actually took steps to arrange the refinancing, although they never actually completed the loan. I am not suggesting that William and Deborah are parties to the Agreement. However, I am simply pointing out that William and Deborah were aware of what was taking place and they were taking steps to assist Douglas to pay Tanya out.
- [55] With respect to Douglas' submission that Tanya holds no interest in the Property, William and Deborah testified that Tanya paid them no money to be added as a joint tenant. However, they confirmed that once the New Home was added to the Property, Douglas and Tanya covered all of the mortgage payments. They also testified about how Douglas and Tanya improved the Property, for example, by adding the New Home, various out-buildings and features, such as a shop and water cistern. The New Home and the improvements remain on the Property to the present day.

- [56] Again, Douglas submits that when he signed the Agreement, he received faulty legal advice because he failed to realize that the property equalization payment was premised on Tanya holding an interest in the Property. However, the wording of the Agreement clearly addresses how title to the Property is held and it explains how the values are calculated.
- [57] Douglas admitted during cross-examination that his counsel drafted the Agreement. He also admitted that he reviewed the MOU and the Agreement with his counsel before he signed it. In fact, Douglas' counsel provided him with a certificate of independent legal advice in respect of the Agreement. Therefore, I find that Douglas understood the agreement and he had the benefit of independent legal advice before signing it.
- [58] It may be the case that there was a miscommunication between Douglas and his parents about whether they remained willing to borrow funds to assist him. It may also be the case that Douglas now wishes he had negotiated a different bargain. However, the key issue before me is whether the Agreement should be set aside.
- [59] Once each of them signed the Agreement, Tanya was obliged to transfer her interest in the Property, and Douglas was obliged to make the property equalization payment to Tanya. Tanya's counsel provided an executed transfer document as required, but it was never registered.
- [60] When I consider the evidence in light of the applicable legislative provisions, namely s. 93(3) and (5) of the FLA, I am unable to conclude that there are grounds to set aside the Agreement. I am not satisfied that any of the circumstances listed in s. 93(3)(a)-(d) existed when the parties entered into the Agreement.
- [61] I am also not convinced that the Agreement is significantly unfair after considering the relevant factors stated in s. 93(5) of the FLA. Particularly, there is nothing about the passage of time since the Agreement was signed, the parties' intention to achieve certainty by signing the Agreement, or the parties' reliance on it, which makes it significantly unfair.
- [62] Finally, I would also decline to set aside the Agreement on the grounds stated in s. 93(4) because, after hearing the evidence and the parties' submissions, I would not replace the Agreement with an order that is substantially different from the terms set out in the Agreement.
- [63] For all of these reasons, I have concluded that the Agreement is valid and binding. I find there is no basis to set it aside.
- [64] I also find that Douglas has failed to abide by the following specific terms of the Agreement:
- a) Douglas failed to pay the \$225,000 equalization payment to Tanya;
 - b) Douglas failed to arrange for the payout of the mortgage registered on the Property and for the discharge of Tanya as a borrower or guarantor on the mortgage; and
 - c) Douglas failed to transfer the 2013 Dodge 1500 pickup truck to Tanya.

Issue #2 - Occupational Rent

- [65] Tanya seeks occupational rent on the grounds that when the separation occurred, Douglas told her to leave the family home and not to return. Tanya also requests occupational rent because she planned to use the property equalization payment to purchase a home, which plan was thwarted when Douglas failed to live up to the Agreement.
- [66] Instead of buying a home, Tanya has rented accommodation for herself and the children since separation. Tanya has moved houses repeatedly as a way to reduce her rental costs. Not only did Tanya not receive the property equalization payment due to her under the Agreement, she did not receive child support. Tanya testified about the problems she had covering living expenses for herself and the children following separation.
- [67] While Tanya rented accommodation, Douglas continued to live in the New Home. His new partner has now moved into the New Home as well. Douglas has covered all mortgage payments since separation. His parents continue to pay the property taxes.
- [68] After separation, Tanya rented a home where she and the children lived. Her rent was originally \$2,400 per month, then she began moving to find cheaper rental accommodation. At one point she rented a home for \$1,750 per month, and as of September 2021, she began renting a home for \$1,200 per month.
- [69] The applicable legal principles that apply to deciding whether to award occupational rent were recently reaffirmed by our Court of Appeal in *Lennox v. Lennox*, 2022 BCCA 44 at para. 46, where the court said that "[d]etermining whether to award occupational rent involves the exercise of judicial discretion to do equity between the parties in all the circumstances of the case". In *Dacyshyn v. Semeniuk*, 2007 BCSC 71 at para. 45 (endorsed in *Lennox*), Justice Humphries described doing equity between the parties as follows:
- [45] The recurring theme underlying a claim for occupation rent is one of compensation - a kind of quid pro quo arising in the partition proceedings when the nature of the expenses claimed against the non-occupying tenant can be considered against the circumstances under which that other tenant was deprived of occupancy in order to do equity between the parties.
- [70] Tanya's counsel submits that it would be appropriate to award \$38,800 to Tanya for her occupational rent claim since she has suffered economic hardship as a result of Douglas' refusing to pay her the money owing under the Agreement. The claim for occupational rent is calculated by totalling the rent that Tanya paid for rental accommodation over a total of 26 months from April 1, 2020, to August 1, 2021; and September 1, 2021, to May 1, 2022, at \$1,750 per month and \$1,200 per month, respectively.

- [71] When I consider all of the circumstance of the case, including that Tanya was directed to leave the Property and forced to rent property without the property equalization payment and child support that was agreed to, I am satisfied that this is a case where I ought to exercise my discretion to award a sum for occupational rent. In my view, such an award assists to achieve equity between Douglas and Tanya in all of the circumstances.
- [72] In terms of the amount of the award for occupational rent, I note that Tanya's rental costs since separation are calculated as \$38,800 over a 26-month period. On the other hand, Douglas paid the full monthly mortgage cost for the parties' New Home for the same period of \$52,000 (\$2,000 per month x 26 months = \$52,000). I recognize that had Tanya stayed in the New Home following separation, more likely than not, she would have continued to contribute towards to the monthly mortgage costs.
- [73] Therefore, after factoring in an amount for equal sharing of the mortgage costs, I have concluded that Tanya is entitled to an award of \$12,800 for occupational rent. This amount is the difference between what I find Tanya would have contributed towards the mortgage had she stayed in the New Home (half of \$52,000 which is \$26,000) versus what Tanya paid as rent for alternate accommodation over a 26-month period (\$38,800).
- [74] I, therefore, find that Tanya is entitled to an award for occupational rent from Douglas in the amount of \$12,800.

Issue #3 - Child Support

- [75] Pursuant to the Agreement, Douglas agreed to pay Tanya child support of \$500 each month commencing April 1, 2021. On April 1, 2021, Douglas did pay Tanya child support of \$500. Since then, Douglas has not paid child support.
- [76] Douglas agrees that he has not been paying Tanya child support. He decided it was better to cover some of Tanya's expenses instead of paying her cash. Douglas pays more than \$500 per month for covering Tanya's monthly life insurance and the insurance on the truck that she drives.
- [77] Douglas testified that he is concerned that if he gives Tanya cash for child support payments, she will use the money to buy cigarettes and alcohol. Douglas asked Tanya many questions on cross-examination about her discretionary spending on such items. Tanya does not deny purchasing cigarettes and alcohol.
- [78] However, I find the matter of Tanya's discretionary spending is irrelevant to Douglas' obligation to pay child support. Tanya testified that since she receives no child support payments, she has used her limited savings and tax refunds to cover the children's expenses, for example, travel costs for the children to attend team sporting events.

- [79] Concerns over how a recipient parent spends money is not a proper basis for refusing to pay child support, nor is it a proper basis to circumvent the recipient parent by paying expenses directly. The payor parent has no right to impose their own unilateral private support regime on a recipient parent: *Swiderski v. Dussault*, 2009 BCCA 461 at paras. 38-39.
- [80] Our system of child support assumes that both recipient and payor co-parents are engaged in the good faith economic support of the children of the marriage. If payors could unilaterally impose their own private child support regimes on recipients, it would, in my view, undermine the objectives of conflict-reduction and consistent treatment of spouses and children in similar circumstances referred to in s. 1 of the Federal Child Support Guidelines, SOR/97-175.
- [81] I am also concerned that unilateral child support regimes create potential risks to the autonomy and dignity of recipient co-parents. Douglas clearly disapproves of Tanya's lifestyle. To address his disapproval, he decided not to give her cash child support payments. Instead, Douglas unilaterally selected expenses to pay directly using the money that he would, otherwise, have paid her as child support. I find that this is intended to reduce Tanya's autonomy and dignity and it is not appropriate.
- [82] I am not suggesting that co-parents are unable to consent to arrangements in which a payor directly pays certain expenses in full, or partial, fulfillment of their child support obligations. Rather, I am of the view that in the circumstances before me, Douglas has no right to unilaterally impose an expense-paying arrangement on Tanya in satisfaction of his obligation to pay her child support.
- [83] Under the Agreement, Douglas was required to pay Tanya child support of \$500 per month from April 1, 2020, and while he paid certain insurance expenses totalling approximately \$500 per month, he did not pay the child support required. I find that as of the date of trial, Douglas owes child support of \$12,000. I arrived at this amount of child support owing by multiplying \$500 by 24 months, from May 1, 2020, to May 1, 2022.
- [84] I therefore find that Tanya is entitled to an award for unpaid child support from Douglas in the amount of \$12,000.

Issue #4 - Divorce & Name Change

- [85] The parties request a divorce. The parties have met the legislative requirements for a divorce as set out in the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), and they are entitled to a divorce.
- [86] Tanya also requests, pursuant to the Name Act, R.S.B.C. 1996, c. 328, that her name be changed from "Tanya Lynn Mazanek" to "Tanya Lynn Vipond". In my view, it is appropriate to grant her request, and I order the claimant's name be changed to "Tanya Lynn Vipond".

Issue #5 - Declarations Sought

[87] Having found that the Agreement shall not be set aside and that Douglas has failed to abide by its terms, I will now consider Tanya's requests for various orders and declarations in the event Douglas fails to pay her the amount owing under the Agreement.

[88] Specifically, Tanya seeks the following:

- a) a declaration that she is a beneficial owner of 50% of the New Home and 25% of the Property, or alternatively, a declaration that the value of her interest in the New Home and Property is \$225,000;
- b) a declaration that Douglas Mazanek is solely responsible for the FCC mortgage and shall indemnify Tanya Vipond of same;
- c) an order for the partition and sale of the Property, payout of the FCC mortgage, and payment to be made out of the net proceeds of sale to Tanya Vipond in the amount of \$275,800 with Tanya Vipond having sole conduct of sale; and
- d) an order that Douglas Mazanek cause DTM Ventures Ltd. to transfer ownership of the 2013 Dodge 1500 Sport Pickup truck to Tanya Vipond within 30 days.

[89] Counsel for Tanya points out that ss. 92 and 97 of the FLA provide that the court may, for purposes of giving effect to an agreement respecting property division, for example, determine any matter concerning ownership of property and make orders necessary for the division.

[90] However, in my view, the court ought not to make the orders or declarations sought in subparagraph 88(a) and (c) above. I have reached this conclusion because those items potentially affect William and Deborah's interest in the Property in circumstances where they are not parties to this proceeding. I therefore decline to make the orders and declarations sought in subparagraphs 88(a) and (c) above.

[91] I grant the relief sought in subparagraphs 88(b) and (d) above. Namely, a declaration that Douglas Mazanek is solely responsible for the FCC mortgage and that he shall indemnify Tanya Vipond of same; and an order that Douglas Mazanek shall, within 30 days of today's date, cause DTM Ventures Ltd. to transfer ownership of the 2013 Dodge 1500 Sport Pickup truck to Tanya.

Disposition

[92] After considering the evidence and the submissions of the parties, this Court orders and makes the declarations as follows:

- a) The Agreement is valid and binding.

- b) The parties shall abide by the terms of the Agreement, including by the respondent, Douglas Mazanek, paying \$225,000 to the claimant, Tanya Mazanek, forthwith upon the claimant delivering to him an executed Form C transfer in respect of the Property.
 - c) Douglas Mazanek is solely responsible for the FCC mortgage, and he shall indemnify Tanya Vipond of same.
 - d) Douglas Mazanek shall cause DTM Ventures Ltd. to transfer ownership of the 2013 Dodge 1500 Sport Pickup truck to the claimant, Tanya Mazanek, by no later than 30 days from the date of these reasons for judgment.
 - e) Douglas Mazanek shall pay child support arrears of \$12,000 to the claimant, Tanya Mazanek.
 - f) Douglas Mazanek shall pay occupational rent of \$12,800 to the claimant, Tanya Mazanek.
 - g) Subject to s. 12 of the Divorce Act, the claimant, Tanya Lynn Mazanek, and the respondent, Douglas Lesley Mazanek, who were married at Tomslake, British Columbia, on August 4, 2017, are divorced from each other. The divorce shall take effect on the 31st day after the date of this order.
 - h) Pursuant to s. 5(3) of the Name Act, R.S.B.C. 1996, c. 328, the name of the claimant, Tanya Lynn Mazanek, shall be changed to "Tanya Lynn Vipond".
 - i) The counterclaim is dismissed.
- [93] The parties sought leave to make costs submissions following the court's judgment. Therefore, the issue of costs is adjourned pending receipt of further submissions from the parties. The parties have leave to contact SC Scheduling to request a date and time to make costs submissions to the court.

"E. McDonald J."

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