

CANADA / JUDGMENT

McMullan v. Papadogeorgos

2025 BCSC 379

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 379 McMullan v. Papadogeorgos

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

McMullan v. Papadogeorgos,

2025 BCSC 379

Date: 20250306

Docket: 213432

Registry: Victoria

Between:

Milissa Shirley Anne McMullan

Claimant

And:

Panagiotis Papadogeorgos

Respondent

Corrected Judgment: The text of the judgment was corrected

at paragraph 78 on March 24, 2025

Before: The Honourable Justice LeBlanc

Reasons for Judgment

Counsel for Claimant:

T. Martens

Counsel for Respondent:

J. K. Ough

Place and Date of Hearing:

Victoria, B.C.

February 10, 2025

Place and Date of Judgment:

Victoria, B.C.

March 6, 2025

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INTRODUCTION

[1] The primary issue in this family law proceeding is the treatment of a home jointly owned by the parties.

[2] The parties began dating in April 2015, were engaged in July 2015, began cohabitating on November 1, 2015, and married on June 30, 2016.

- [3] The parties separated on December 22, 2020.
- [4] The notice of family claim was filed on November 8, 2021. The respondent filed his response to civil claim and counterclaim on March 13, 2023.
- [5] The respondent brings this application pursuant to Rule 11-3 for summary determination seeking an order for divorce and a finding that certain property is excluded property pursuant s. 85 of the Family Law Act, RSBC SBC 211, c. 25 (the "FLA"), or alternatively, for reapportionment in his favour based on unfairness pursuant to s. 95 of the FLA.
- [6] The main property in question is a home located at 786 Sunridge Valley Drive, Victoria, BC and legally described as:

PID: 013-293-061

Lot 7, Plan V1P48153, Section 75, Esquimalt District, Plan 48153

(the "Family Residence").

- [6] The claimant disputes that the Family Residence is excluded property or that the facts support the claim of unfairness. The claimant seeks equal division of family property and debt.

THE FAMILY RESIDENCE

- [7] The facts are generally not in dispute between the parties.
- [8] In April 2010, the respondent and his parents purchased the Family Residence for \$560,000 and were registered as joint tenants. The respondent's parents provided a down payment of \$350,000 and the respondent agreed to be solely responsible for the debt registered against the Family Residence. This was an oral agreement and there was no other agreement detailing their co-ownership.
- [9] To purchase the Family Residence, \$354,213.70 was paid by the respondent's parents with the remainder of the purchase price being financed. It was agreed that the respondent would be responsible for paying the monthly mortgage payments.
- [10] After purchase, renovations were made and financed through an RBC line of credit secured against the Family Residence.
- [11] Following purchase, the respondent lived in the upper suite of the Family Residence with the parents residing in a lower suite.
- [12] The claimant and her daughter moved into the upper suite with the respondent on November 1, 2015. The respondent's two sons also lived in the Family Residence at this time.
- [13] An appraisal of the Family Residence was prepared on July 23, 2021 at the request of the claimant, showing the market value as of November 1, 2015 at \$550,000.00.

- [14] After moving into the Family Residence, the claimant was paying \$600 per month towards the mortgage which she believed represented one half. The claimant later learned that the combined monthly mortgage payments were only \$726.72 per month. For how long this continued is not apparent by the evidence before me as starting in or around March 2018, the parties opened a joint account where the claimant's employment income and most of the respondent's employment income was deposited. These funds were used to make monthly mortgage payments and pay for other house and family expenses.
- [15] While there was discussion of entering into a marriage agreement, the parties did not discuss what the terms of the agreement would include and no agreement was ever finalized.
- [16] Starting in or about 2019, the claimant's relationship with the respondent's parents became strained and the parents determined that they no longer wanted to co-own the Family Residence with the respondent.
- [17] In 2019, the respondent's parents severed the joint tenancy and the title to the Family Residence was changed such that the respondent held a one-third interest and the parents a two-thirds interest, as tenants in common.
- [18] In May 2020, the mortgage over the Family Residence was renewed with the RBC line of credit being rolled into the mortgage. The outstanding balance of the RBC line of credit was approximately \$115,000. The total renewed mortgage at this time was \$285,584.16.
- [19] On June 17, 2020, the respondent's parents filed a petition seeking to have the Family Residence sold. In September 2020, the respondent negotiated a settlement with his parents whereby his parents would receive \$250,000 for their interest in the Family Residence. The filed Form A Transfer declares the value of the Family Residence at \$542,988.20 and I am advised there is no other source of value for this time period.
- [20] The claimant was not involved in the negotiations with the respondent's parents. The claimant says that the respondent told her that any negotiated discount of payout represented a gift from his parents to their family. The respondent says that he did not say that it was gift but cannot recall exactly what was said.
- [21] The respondent was unable to take out financing to pay the \$250,000 owing to his parents and take on the existing mortgage obligations on his own. To address this, in September 2020, the claimant was added on title to the Family Residence as a joint tenant with the respondent and the parties jointly obtained a new mortgage in the amount of \$550,450. The following debts were paid out by the new mortgage: \$289,971.95 to discharge the existing RBC mortgage; \$250,000 to the respondent's parents; \$22,017.50 for CRA debt relating to the respondent; and \$1,221.75 relating to a crown debt.
- [22] Shortly thereafter in December 2020, the parties separated and the claimant continued to reside in the Family Residence until the end of January 2021. When the claimant moved out of the Family Residence she stopped contributing towards the mortgage. The claimant says

that this was discussed with the respondent and the respondent acknowledged that she would have to pay rent elsewhere. The claimant has contributed towards the property taxes for the Family Residence, as follows: 2021: \$775.12; 2022: \$1,205.39; and 2024: \$1,708. The claimant did not pay in 2023 as when she went to pay them she was told they had already been paid. The claimant has further attempted to contribute towards the house insurance in 2023 but the respondent would not accept the payment.

- [23] The claimant moved into a suite in May 2021 paying rent of \$2,500 per month which has since increased to \$2,640 per month.
- [24] The Family Residence was appraised on February 1, 2021 as having a value of \$825,000 and in October 2024 as having a value of \$1,010,000.
- [25] The basement suite in the Family Residence has remained unoccupied since the respondent's parents have moved out although the claimant wishes for it to be rented to generate income.

POSITION OF THE RESPONDENT

- [26] The respondent submits that the equity in the Family Residence is excluded property by way of combination of being property acquired before the relationship and equity realized from gifts received from the respondent's parents. In addition, the respondent argues that the court should look at the length of the parties' relationship and other factors to find that the claimant would be in a windfall position if she realized any equity from the Family Residence.
- [27] Alternatively, if the Family Residence is family property, the respondent says the claimant should not realize any benefit from the date she moved out of the Family Residence. It is his position that she has not contributed during that period and should not receive any windfall.
- [28] The respondent says that on the 2015 cohabitation date, one-third of the value of the Family Residence is to be excluded property which he says is \$183,333.53. I note that this does not consider the actual equity on the cohabitation date or put another way, the debt registered against the Family Residence.
- [29] Based on the October 24, 2024 appraisal of \$1,010,000, the respondent says that the present equity is \$484,853.97 after deducting the mortgage balance as at October 2024. From that the respondent says that \$183,333.53 representing the excluded property calculation is to be deducted leaving a total of \$301,520.62. The respondent then submits a further \$186,266.01 is to be deducted from this total representing what the respondent categorizes as a gift from his parents towards the equity of the Family Residence leaving a balance of \$115,254.61. The respondent further seeks to have the sum of \$144,150.90 deducted representing mortgage payments made during 2021, 2022, 2023 and 2024. Under this proposal, the respondent says there is nothing to be paid to the claimant.

- [30] The respondent puts forward a second position, which he says is based on unfairness. In this alternative position, the respondent says that the equity in the Family Residence is \$484,853.97 after taking the October 24, 2024 appraised value and deducting the outstanding balance on the mortgage as of October 2024. However, the respondent says that \$186,266.01 representing 100% the parent's gift, \$72,075.45 representing the one-half of the mortgage payments and one-half of the mortgage penalty of \$7,000 ought to be deducted from the claimant's one-half. Again, under this proposal, the respondent says there is nothing to be paid to the claimant.
- [31] Lastly, the respondent says that he has paid \$8,000 to the claimant representing any value she could hope to realize from the Family Residence.

POSITION OF THE CLAIMANT

- [32] The claimant seeks an equal division in the Family Residence as of the date of the hearing.
- [33] The claimant submits that pursuant to the FLA, there is a presumption that the Family Residence is to be divided equally. The claimant says that also applies to the family debt, namely the mortgage.
- [34] The claimant says that she contributed to the equity in the Family Residence from cohabitation until she became a 50% owner in September 2020, and continued to make mortgage payments until January 2021. Since January 2021, the claimant has contributed towards the property taxes. The claimant says that the respondent did not qualify for a mortgage on the Family Residence without her and would have had to sell in 2020 if she had not agreed to secure the mortgage with him.
- [35] The claimant says that there is no evidence that the portion said to be contributed by the respondent's parents was intended to be a gift benefiting only the respondent. The claimant says there is nothing to document the gift or otherwise demonstrate that it was intended to remain exclusive property of the respondent.
- [36] Lastly, the claimant denies there are any factors that would give rise to unfairness and again points to her assistance in securing a mortgage so that the Family Residence could be kept, allowing the parties to realize on the upward trending housing market. The claimant also says that of the RBC line of credit that was assumed into the mortgage she is responsible for, \$45,500 was for the respondent's work truck, \$20,000 was for home renovations and the remainder is unknown but it may be for business investments of the respondent or a vehicle the respondent purchased for the claimant.
- [37] The claimant acknowledges receiving the \$8,000 payment from the respondent but says that the payment represented her one-half value of the household furniture and miscellaneous items that were left with the respondent when she moved out.

SUITABILITY FOR SUMMARY TRIAL

- [38] Both parties say that this matter is suitable for determination by summary trial pursuant to Rule 11-3 of the Supreme Court Civil Rules.
- [39] I am advised that the only issue to be decided is whether the Family Residence is excluded family property, and if so, the extent of that exclusion. I am asked to make that determination on the evidence before me.

LEGAL FRAMEWORK

- [40] Family property is broadly defined by s. 84 of the FLA and includes all property directly, indirectly or beneficially owned by a spouse that is not properly excluded by s. 85. Section 85 defines five types of excluded property and important here is property acquired by a spouse before the relationship began (s. 85(1)(a)) and gifts to a spouse from a third party (s. 85(1)(b.1)).
- [41] Property that is acquired by a spouse before the relationship between the spouses began is excluded property. However, under s. 84(g)(i), the amount by which the value of the excluded property has increased since the start of the relationship is family property subject to the presumption of equal division. Under s. 3 of the FLA, the relationship between the spouses begins on the earlier of either the date on which the spouses began to live in a marriage-like relationship, or the date of their marriage.
- [42] Section 86 of the FLA defines family debt to include all financial obligations incurred by a spouse during the relationship, and after separation, if incurred for the purpose of maintaining family property. By implication, family debt does not include financial obligations incurred by a spouse before the relationship began.
- [43] Section 81 of the FLA provides that upon separation each spouse has a right to an undivided half interest in all family property as tenants in common, and is equally responsible for family debt.
- [44] Section 87 of the FLA provides that, unless an agreement or order provides otherwise, the value of family property is determined at the date of the hearing, although the court has the discretion to depart from that date. The value is to be based on fair market value.
- [45] Section 95(1) of the FLA offers courts the discretion to divide family property unequally if an equal division would be significantly unfair having regard to the factors enumerated in s. 95(2). Those factors include:
- (a) the duration of the relationship between the spouses;
 - (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1) [setting aside agreements respecting property division];
 - (c) a spouse's contribution to the career or career potential of the other spouse;

- (d) whether family debt was incurred in the normal course of the relationship between the spouses;
 - (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
 - (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
 - (g) the fact that a spouse, other than a spouse acting in good faith,
 - (i) substantially reduced the value of family property, or
 - (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
 - (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
 - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.
- [46] Considering the list, the respondent says the duration of the relationship and "other factors in the relationship" lead to unfairness.

ANALYSIS

Did the respondent intend for his interest in the Family Residence to remain excluded property following cohabitation on November 1, 2015?

- [47] The respondent submits that it was his intention to have the Family Residence remain excluded property when the claimant was not registered on title (2015 - 2020) and referred me to the Land Title Act, R.S.B.C., 1996, c. 250.
- [48] The onus rests upon the spouse asserting an exclusion to establish, on a balance of probabilities, the basis for and the extent of the exclusion, based on "clear and cogent evidence": *Shih v. Shih*, 2017 BCCA 37 at paras. 42 - 43.
- [49] The question is whether the parties when they began cohabitating intended for the respondent's interest in the Family Residence to be owned together as a pooled resource of the family: *Dunn v. Cashin*, 2021 BCSC 1000 at para. 89; *World v. World*, 2021 BCSC 1177 at para. 18.
- [50] I find that the respondent has failed to establish, on a balance of probabilities, that the Family Residence was intended to be excluded property following his cohabitation with the claimant.

- [51] The evidence is that the claimant upon moving into the Family Residence was contributing a significant portion towards the mortgage and other housing costs. The Family Residence was used as the home for the respondent and the claimant and their children. The respondent did not enter into a cohabitation agreement with the claimant and there is nothing documenting an intention to keep the respondent's interest in the Family Residence as separate property. I am satisfied that the evidence supports an intention between the respondent to share the Family Residence with the claimant and have it be pooled family property from November 1, 2015 onwards.
- [52] In further support of this intention is the transaction that occurred in 2020 when the respondent and the claimant purchased the two-thirds interest of the Family Residence from the respondent's parents with the title being registered in the names of the respondent and the claimant, as joint tenants.
- [53] I find that the respondent has failed to meet his burden and the respondent's interest in the Family Residence is not excluded property under s. 85 of the FLA.

Did the respondent intend for a gift to be excluded property?

- [54] The respondent says that he received a gift of \$390,249.60 from his parents that is wrapped into the equity of the Family Residence and excluded property.
- [55] The respondent exclusively negotiated the buy-out of his parents' interest in the Family Residence. He says that they would have been entitled to receive \$241,135.90 representing their two-thirds interest of the equity in the Family Residence plus return of their down payment of \$399,213.70 for a total of \$640,394.60 and accordingly he received a gift of \$390,249.60 from his parents. I find that this calculation provides for a double counting of the parents' contribution towards the Family Residence by not considering that the down payment created equity. Pursuant to the oral agreement, the parents held a two-thirds interest in the Family Residence, debt free. Based on the 2015 appraisal, that equity would be \$366,666.67. For reasons only known to the respondent and his parents, the respondent's parents negotiated and accepted \$250,000 for their interest.
- [56] The transfer documents record a transfer of the parents' interest of the Family Residence from them to the respondent and the claimant as joint tenants for consideration of \$250,000.
- [57] Other than what the respondent now says, there is nothing to support the respondent's claim that he received a gift from his parents. If the respondent did receive a gift, there is nothing supporting the amount of the gift or when the gift was given. Instead, the evidence demonstrates that the respondent negotiated a settlement of his parents' partition of property claim for \$250,000, and nothing more.
- [58] Further, the respondent acted contrary to an intention to separate the parents' gift, if one existed, by immediately transferring the Family Residence into joint tenancy with the claimant and using family funds, jointly borrowed by the parties, to pay the \$250,000.

[59] I find that the respondent has failed to establish that there was a third-party gift constituting excluded property.

What is the value of any excluded property on November 1, 2015?

[60] On November 1, 2015, the claimant began living in a marriage-like relationship with the respondent and that is the date the relationship began, pursuant to s. 3 of the FLA.

[61] As I have found that the respondent's interest in the Family Residence was family property after November 1, 2015, the date to determine the value of the respondent's excluded property is November 1, 2015 when the parties began living in a marriage-like relationship.

[62] On November 1, 2015, the Family Residence had an appraised value of \$550,000.

[63] The respondent had a one-third interest in the Family Residence and based on the agreement with his parents, one-third of the appraised value would be attributable to him being \$183,333.33 along with 100% of the debt registered against the Family Residence.

[64] I do not have evidence of the actual outstanding debt registered against the Family Residence as of November 1, 2015; however, the parties have urged me to proceed based on the material before me. The best evidence that I have are the figures derived from the 2020 statements. The claimant relies on these figures and I will do the same as it is unlikely that the debt would have been lower, assuming the mortgage payments were made pursuant to the terms of the mortgage. Accordingly, the mortgage registered against the Family Residence in 2015 was no less than \$169,657.41 and the RBC line of credit was no less than \$98,500 for a total debt of \$268,157.41. I note that in making this determination, I am permitted to draw reasonable inferences from evidence that is less than certain or precise in order to do justice between the parties: *Shih* at para. 44.

[65] As of November 1, 2015, the respondent did not hold any equity in the Family Residence that could be considered excluded property.

[66] The respondent submitted that I should only consider the market value of the Family Residence as of November 1, 2015; however, in determining excluded property, it is only the equity that I am to consider: *Bahn v. Chrysler*, 2022 BCCA 74 at para. 44.

Is reapportionment justified due to unfairness?

[67] The respondent submits that the division of the Family Residence cannot be sustained based on the short duration of the five-year relationship.

[68] With respect to contributions related to the Family Residence during the relationship, the respondent did not provide for any greater contribution than the claimant. During periods of time, the claimant was making larger contributions towards the mortgage than the respondent. The respondent was only able to pay out his parents and refinance the home with the assistance of the claimant. Further, the claimant assumed the mortgage obligations which included debt incurred by the respondent. I do not find that unfairness existed during

the relationship.

- [69] When considering the contributions of the claimant towards the Family Residence, the length of the relationship becomes a factor that has no strength in the analysis of unfairness.
- [70] Following the relationship, the respondent says that the claimant should not benefit from the increase in the market value of the Family Residence as she was not paying the mortgage. That fails to take into consideration the limits to the claimant's ability to otherwise enter the housing market as she is still a debtor on the mortgage. Further, the claimant was required to pay rent for her alternative housing while the respondent remained living in the Family Residence.
- [71] In assessing whether equal division would be significantly unfair, the courts have held that a party must demonstrate that their contribution was a cause of the property's increase in value as opposed to simply market factors: *Draper v. Smith*, 2022 BCSC 2133 at para. 77. The respondent has not demonstrated that he contributed to the increase in the equity. Any payment was routine and did not contribute to an increase in value.
- [72] From January 1, 2021 to present the respondent paid \$144,150.91 in mortgage payments. During this same period, the claimant paid between \$2,500 and \$2,640 per month for rent. At \$2,500 per month, that would be \$120,000. The difference is \$24,150.91 and the respondent had the benefit of a large house with an income-generating lower suite while the claimant was living in a two-bedroom rental suite. I do not find the difference in payments to fall into the category of being unfair. Further, I have considered the debt assumed by the claimant which, when the mortgage was taken out, included debts of the respondent.
- [73] I am cautioned against taking an overly detailed review of the expenditures by one party over another. Relying too heavily on such an analysis risks departing from the strong presumption of equal division expressed in the FLA on a technical and narrow basis. The purpose of reapportionment is to remedy significant unfairness and not to achieve absolute equity: *Draper* at para. 75. I do not find that the difference noted above reaches a level of being significantly unfair when one considers the advantages the respondent had in remaining in the Family Residence while the claimant rented.
- [74] Courts have consistently held that, as a general rule, parties should share in the post-separation increase in the value of property independent of the parties' respective contributions to the increase in value: *Jaszczewska v. Kostanski*, 2016 BCCA 286 at para. 39; *Draper* at para. 76.
- [75] I do not find that it is significantly unfair to divide the equity and debt in the Family Residence equally as of February 10, 2025, being the date of this hearing.

[76] Lastly, I accept the evidence of the claimant that the \$8,000.00 payment represents a buy-out of her one-half of the furniture remaining in the Family Residence. Even if this were not the case, it would not change my findings on equal distribution.

DIVORCE

[77] The parties both seek an order for divorce, by consent. They have been living separate and apart since January 2021. I am satisfied that the requirements for a divorce order pursuant to s. 12 of the Divorce Act are met in this case. I therefore grant an order of divorce that will take effect on the 31st day after the date of this judgment.

SUMMARY OF ORDERS MADE

[78] In conclusion, I make the following orders:

1. Subject to s. 12 of the Divorce Act, the claimant Milissa Shirley Anne McMullan, and the respondent, Panagiotis Papadogeorgos, who were married at Saanichton, BC, on June 30, 2016, are divorced from each other, the divorce to take effect on the 31st day after the date of this judgment.
2. Paragraphs 1 - 3 of Part 1 of the respondent's application are dismissed.
3. The claimant is entitled to share equally in the equity and debt of the Family Residence at a valuation date of February 10, 2025.
4. As the successful party, the claimant is entitled to her costs.

[79] If assistance in implementing this order is required, the parties may request a further hearing before me.

"LeBlanc, J."

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