

CANADA / JUDGMENT

Naidoo v. Naidoo

2025 BCSC 1340

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1340 Naidoo v. Naidoo

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Naidoo v. Naidoo,

2025 BCSC 1340

Date: 20250715

Docket: E16033

Registry: Chilliwack

Between:

Neelamagan Naidoo

Claimant

And

Tinygee Naidoo

Respondent

Before: The Honourable Justice MacNaughton

Reasons for Judgment

The Claimant, appearing in person:

N. Naidoo

The Respondent, appearing in person:

T. Naidoo

Place and Date of Trial/Hearing:

Abbotsford, B.C.

October 23-27 and 30-31, 2023

November 1-2, 2023

February 12-16, and 20-23, 2024

Chilliwack, B.C.

September 16-20, 2024

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Chilliwack, B.C.

July 15, 2025

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Challenges in This Case

- [1] The issues in this case were factually complex, and the trial presented a number of challenges for the self-represented parties and the court. I briefly set them out in the paragraphs that follow.
- [2] Neelamagan Naidoo's and Tinygee Naidoo's (nee Naidoo) relationship spanned over 55 years in Canada and South Africa. As of their separation on October 23, 2018, they owned properties in both countries.
- [3] The litigation consumed significant, and scarce, judicial resources over more than five years.
- [4] On October 25, 2018, proceedings were first commenced by Ms. Naidoo in the BC Provincial Court when she filed a without notice application for a protection order. A time-limited order was granted to expire on October 31, 2018.
- [5] On October 31, 2018, the parties appeared before Judge K. Skilnick, who replaced the protection order and instituted a no contact order between the parties and between Mr. Naidoo and his son.
- [6] As the Provincial Court did not have jurisdiction to grant a divorce or to determine property issues, and as the parties had not otherwise resolved their dispute, Mr. Naidoo commenced these proceedings by a notice of family claim filed on February 15, 2019, with the assistance of counsel. The notice of family claim was amended on May 27, 2019.
- [7] Ms. Naidoo responded to the claim and filed a counterclaim on June 21, 2019, without the assistance of counsel, although she was represented at times during this proceeding. For most of the applications and at trial, neither party was represented.

- [8] In her case management order of September 6, 2023, Justice Hardwick (who had been appointed by then Chief Justice Hinkson as the case management judge) granted leave for each party to have a personal representative or support person attend the trial with them. Those persons were not permitted to make submissions to the court or to be a witness. Justice Hardwick also made an order excluding witnesses from the courtroom until they had given their evidence.
- [9] In preparation for the trial and during it, Mr. Naidoo received assistance from the parties' daughter, Angeni Naidoo, a South African lawyer who practices there with her husband. That assistance extended to preparing application materials, his documents for trial; questions for his cross-examination of Ms. Naidoo; and his written closing arguments. Angeni was not in the courtroom. For much of the trial, Mr. Naidoo was supported in the courtroom by a friend who recorded requests that I made for documents and information and assisted Mr. Naidoo in managing his documents.
- [10] Leading up to and during the trial, Ms. Naidoo received assistance from the parties' son, Desigan Naidoo. He assisted in preparing application materials, her documents for trial, and the written script of her direct evidence (about which I will have more to say later in these reasons). In addition, he located documents for her in the courtroom and responded to requests that I made for documents and information. While Desigan was not legally trained, it was clear that he had dedicated an enormous amount of time to this case.
- [11] I did not permit Desigan to assist Ms. Naidoo to the same extent during her cross-examination, but Ms. Naidoo repeatedly looked to him for direction, and he nodded or shook his head as she answered certain questions. I warned him not to do so, and, when he continued, at one point I asked him to leave the courtroom.
- [12] There was a great deal of animus between Desigan and his father.
- [13] Regularly during the trial, Ms. Naidoo expressed her concern that Mr. Naidoo was not truly self-represented but was, in fact, represented by two lawyers, Angeni and her husband. She suggested that she was improperly disadvantaged as a result. I explained to Ms. Naidoo that it was not improper for Mr. Naidoo to receive assistance from others, just as it was not improper for Desigan to assist her. Despite that, on a number of occasions, she complained about the "unfairness" of her being self-represented and Mr. Naidoo being represented. Even Ms. Naidoo's written closing submission referred to her being a self-represented litigant and to Mr. Naidoo as being "represented by foreign lawyer Angeni Naidoo and foreign Advocate Shaun Van Vollenhaven".
- [14] There is a great deal of animus between Ms. Naidoo and her daughter Angeni.
- [15] During this proceeding, Ms. Naidoo reported Angeni to the Legal Practice Council, the body governing legal practice in South Africa. From the Council's decision dismissing Ms. Naidoo's complaint, it appears that Ms. Naidoo alleged that Angeni misappropriated funds and fraudulently produced documents purporting to bear Ms. Naidoo's signature.

- [16] According to the decision in evidence, the Council dismissed the complaint, concluding that Ms. Naidoo had not proven her allegations and noting that Ms. Naidoo's complaint was filed in the context of a "massive" family dispute and ongoing divorce proceeding between these parties.
- [17] There were a number of highly contentious pretrial applications.
- [18] The parties originally estimated that the trial would take 10 days. They later revised their estimate to 10 days each. The trial took 23 days. As a result of difficulties in scheduling additional days in an already busy court schedule, the evidence was interrupted, making it difficult for the witnesses and the court to keep the evidence fresh in their minds.
- [19] Justice Hardwick was appointed as case management judge because of the number of court appearances, the involvement to that point of at least six judges or associate judges in the Supreme Court, and the difficulties the parties demonstrated in navigating the legal process. She held a number of judicial management conferences to assist the parties through to trial.
- [20] Despite Justice Hardwick's efforts, the parties remained ill-prepared for the adversarial trial process, and, as a result, much judicial time and resources were wasted on issues that mattered to the parties but were irrelevant to the legal dispute before me. In cross-examination, the parties struggled to focus on the legally relevant issues as opposed to what was important to them. They struggled to understand that hearsay was not admissible for the truth of its contents and the use to which documents could be put. Both used cross-examination as an opportunity to revisit old grievances, or to air wrongs that they believed they suffered at the hands of the other during their lengthy marriage. In cross-examination, the parties tended to make statements rather than asking questions and to answer a question with a question. The record is replete with me admonishing both.
- [21] The parties testified and cross-examined each other without understanding the rule in *Browne v. Dunn*, 6 R 67, 1893 CanLII 65 (FOREP). I provided them with a written and oral explanation of the rule, but the parties introduced documents without putting those documents to the other during cross-examination. Neither party understood that documents are hearsay and, alone, do not prove facts.
- [22] The parties complained about the adequacy of the other's documentary disclosure. Mr. Naidoo testified that he did not have access to documents that were in the parties' home in Agassiz because, when he left in October 2018, he did not take any documents, and he could not go back after the protection order and the no contact orders were in place. He also said he did not have access to documents that he believed to be in a property in Pageview, South Africa.

- [23] The documents were not produced chronologically, or as they related to an issue. Rather, they were grouped by type of document. Documents relating to an issue were found in various tabs in the parties' binders and much trial time was spent locating relevant documents. Only some of the parties' documents produced for the trial were tendered into evidence.
- [24] Some of the documents were bad photocopies, difficult to interpret, or only portions of a complete document, such as a single page from a bank statement. Sometimes, the party tendering the document intended to refer only to a portion of it. Unfortunately, it was not always clear where the portion was from. Many of the documents were duplicated. Sometimes, a partial document was in one tab in a binder and the remainder in another.
- [25] Key documents were not in evidence. For example, Ms. Naidoo, who testified that she brought her savings to Canada before they immigrated, did not produce historic bank records to establish the source of those funds or the funds that she said she used to purchase property in South Africa that was registered in her name. It was Mr. Naidoo's position that he and his business were the source of those funds. Ms. Naidoo's non-disclosure continued despite Justice Taylor's November 29, 2021 order (the "Taylor Order") that she provide these financial documents.
- [26] Mr. Naidoo's disclosure was more complete, but it also did not contain historical records tracing the source of funds. I realize the difficulties involved in producing records that are decades old and where appropriate, have made allowances for the lack of records. Nonetheless, key records are missing.
- [27] Although Ms. Naidoo was the family's record keeper, she did not produce any documents about the family's application to come to Canada. Mr. Naidoo testified that the records were in Ms. Naidoo's possession, and he did not have access to them.
- [28] The parties' immigration application was under a then-existing entrepreneurial immigration program. As I understand the program from the evidence, immigrants obtain a pathway to permanent immigration status in exchange for a significant business investment in Canada. The investment is intended to provide an economic benefit to Canada and to employ Canadians.
- [29] Later correspondence from Canada Immigration, relating to whether the family had complied with their immigration conditions, referred to Mr. Naidoo's application to immigrate with his family. I suspect that the application would have revealed information about the parties' finances and their proposal for investment after arrival. It may well have set out how much the parties were planning or required to invest in Canada, how the investment would benefit Canada, and the source of their funds.

- [30] Based on some of the records Ms. Naidoo kept, and the fact that she completed the immigration application on behalf of her family, it is improbable that she did not keep their immigration files. She repeatedly said that she "propped up" Mr. Naidoo in the application. There is no documentary evidence of how she did so. I have done my best, on the available evidence, to piece together the immigration process they followed.
- [31] In their written submissions, both parties made assertions about matters not in evidence. This is improper. As I explained to the parties in a memorandum with respect to their closing submissions, the court's decision is based only on the evidence at trial.
- [32] Both parties expressed dismay about the fact that they are engaged in divorce proceedings at this late stage in their lives. However, despite the court's efforts, and the interruption of the trial for a mandatory settlement conference, they were unable to reach a compromise.
- [33] Much of the parties' evidence appeared to be based on an effort to reconstruct history from reviewing documents, rather than actual memories of events or transactions. This was particularly the case in respect of Ms. Naidoo's written script of evidence, from which she read. As it was clear that she was reading, and I was told that she could not testify without the script, I directed that a copy be provided to Mr. Naidoo and marked it as an exhibit. The script attempted to tie all of the documents referenced in it to a narrative that was written with the assistance of Desigan. Desigan is aligned with his mother in this dispute and stands to personally gain from an outcome in her favour. The written script was full of inadmissible hearsay, often solely to paint Mr. Naidoo in a bad light. A key example is this passage:

The claimant for number of years has been hiding his passports, so I don't know how many yearly India visas he has, I don't know what properties and businesses in India that the claimant has, and my sister who is a psychologist has said that many South African Indian men visiting the brothels in India so I believe [the] claimant has been doing that and is hiding property and his business interests in India

- [34] Desigan's input was apparent throughout the script. The script indicated where Ms. Naidoo was to emphasize her evidence and directed her when to introduce specific documents. When she reached parts of the script that confused her, or when I asked questions that took her outside of the script, Ms. Naidoo looked to Desigan for assistance, and he directed her to other parts of the script, or to documents.
- [35] The depth of the parties' ill-feeling towards each other and to some of their children, exacerbated by this difficult litigation, has torn the Naidoo family apart.
- [36] The animus between Mr. Naidoo and Desigan was palpable. Mr. Naidoo was repeatedly, and often unnecessarily, critical of Desigan's work ethic and character. Mr. Naidoo testified that Desigan had not contributed to the cost of the Coquitlam Property, but documentary records show that he contributed to the extent of arranging for various tradespeople to make repairs to and for renovations to the property. Mr. and Ms. Naidoo relied on their children Primmithi, Angeni, and Desigan to look after their interests in Canada while they returned

to South Africa for extended periods.

- [37] Ms. Naidoo was equally critical of her daughters Angeni and Devirani, both of whom she accused of not contributing to the family's Canadian expenses and of, in effect, stealing from them in the years during which the family lived in Coquitlam.
- [38] Ms. Naidoo was overly critical of Mr. Naidoo. At various times during her evidence, to discredit Mr. Naidoo before the Court, Ms. Naidoo described him as lazy, corrupt, and negligent in his business dealings with others. She said that Mr. Naidoo had lied during his evidence and is, generally, a liar. At various other points, she described him as a womanizer and suggested that he frequented prostitutes. It was not at all clear why that evidence was relevant, but, in any event, it was not put to Mr. Naidoo in cross-examination.
- [39] During his evidence, Mr. Naidoo was more complimentary of Ms. Naidoo's parenting and her contributions to the family. Although she suggested that he minimized her role, to the contrary, he was grateful for and supportive of her role in educating and raising their children. He freely acknowledged that he did not have the education to allow him to do so. He also acknowledged that she made a valuable financial contribution to the family.
- [40] Despite these challenges, the parties require court orders to unwind their relationship. I have done my best to sort through the documents and the parties' evidence to make the necessary factual findings.

The Issues

- [41] In addition to granting the parties a divorce to which they are entitled, there are four key issues I have to decide:
1. the appropriate division of family property, including real and personal property in Agassiz, British Columbia and in Pageview, South Africa;
 2. the appropriate division of other family property;
 3. Ms. Naidoo's claim for spousal support; and
 4. Mr. Naidoo's claim for occupational rent.

There is also a dispute about whether Canadian or South African law should apply to this dispute.

Relationship

- [42] Mr. Naidoo was born on April 20, 1946, and is 79 years old. Ms. Naidoo was born on March 17, 1949, and is 76 years old. Both are in failing health, and, on occasion, the trial was interrupted to accommodate the parties' health difficulties and other challenges. Ms. Naidoo was provided with an amplification device so as to better hear the proceedings.

- [43] The parties were born into a segregated society, known as Apartheid, then in place in South Africa. They are Tamil. Under Apartheid, the all-white government classified the South African population as: Bantu (all Black South Africans); Coloured (mixed race South Africans); Asian South Africans (Indians and Pakistanis); or white.
- [44] As the parties described in their evidence, under Apartheid, the South African government passed a Group Areas Act that established residential and business sections for each race in urban areas. Non-white South Africans lived in separately designated areas and used separate public facilities, including schools. They were not permitted to live, operate businesses, or own lands in any areas except those designated for their racial group. The group area set aside for Asian South Africans, near Johannesburg, was called Lenasia.
- [45] The Asian South Africans living in Lenasia included Tamils, Hindus, and Muslims. As I understood from the parties' evidence, Tamils and Hindus share a religion but not a language, and Muslims and Hindus share a language but not a religion.
- [46] Both parties came from poor families. Mr. Naidoo testified that, at a very young age, his abusive stepfather forced him to leave school and work selling flowers in a cemetery to support his family. He has no formal education.
- [47] Ms. Naidoo was required to play a significant role in raising her younger siblings.
- [48] The parties first married on April 1, 1968, when Mr. Naidoo was 21 and Ms. Naidoo was 19. They married under a community of property regime recognized by South African law. In 1983, they divorced and, very shortly thereafter, remarried out of the community property regime. As discussed later in these reasons, the circumstances of their divorce and subsequent remarriage, and the applicability of an antenuptial contract they entered into on their remarriage, are contentious.
- [49] The parties have four adult children. As all of them go by the surname Naidoo, I will refer to them by their first names, meaning no disrespect. In order of birth, the parties' children are Devirani (1968), Primmithi (1969), Angeni (1971), and Desigan (1975).
- [50] Devirani lives in the Fraser Valley. Primmithi and Angeni live in South Africa and are estranged from each other. Desigan is estranged from his father, and from Angeni and Devirani. Angeni and Devirani are also estranged from their mother. The only child who appears to have a continuing relationship with both parents is Primmithi, although the extent of that relationship was not discussed.
- [51] Mr. Naidoo testified that he loved his family and worked hard to support and, more particularly, to educate his children. He said that educating his children was important to him because he did not have that opportunity. He also testified that he wished to educate his daughters so that they would always have something to fall back on. He described how, after his father died, his uneducated mother had been forced to marry an abusive man. He never wanted his daughters to be in that position. He testified, and was not challenged, that all three of his daughters were educated without the need for student loans. His evidence was

sincere.

- [52] Desigan and his wife live with Ms. Naidoo in a home registered in Ms. Naidoo's name on Fraser Dr. in Agassiz (the "Agassiz Property"). It is the only Canadian real property that is in dispute in this case. There are also issues about: the household furnishings and possessions in the Agassiz Property, a 2016 Kia vehicle, cash, and jewellery, although most of these assets were not a significant focus of the evidence or submissions.
- [53] There is also a dispute about a property in South Africa in the Pageview area outside of Johannesburg (the "Pageview Property") and the household furnishings and possessions in each of the five rental units built on it. The parties had eight gold coins that they divided between them.

Work History

Mr. Naidoo

- [54] Before and after the parties' first marriage, Mr. Naidoo worked in his family's flower business selling flowers in a graveyard, earning minimal income. At some point, he became involved in burglar-proofing homes. He then learned to work in wrought iron, installing gates, railings and staircases. In doing that work, he met a contractor only referred to in the evidence as "Joe" and went into the construction business with him. Their business relationship was relatively short-lived and ended badly. Mr. Naidoo continued working as a contractor/builder on his own. He called his construction business Des-Neil Construction, a combination of his and his son's first names.
- [55] Mr. Naidoo described himself as a well-known builder in Lenasia. Despite Ms. Naidoo's very critical evidence about Mr. Naidoo's business practices and ethics, at one point in her evidence, she agreed that he was known and in demand as a builder. At another point, Ms. Naidoo testified that Des-Neil was a household name in Lenasia.

Ms. Naidoo

- [56] Ms. Naidoo has some education. Although she testified that she had completed her high school graduation or "matriculation", the documents in evidence indicated that she had not. She could have obtained an equivalency but did not complete the steps required.
- [57] During the early years of her marriage, Ms. Naidoo worked in the debtors control department of a distribution company. A letter from the Standard Bank of South Africa indicating that Ms. Naidoo was employed by them as a "lady clerk" from November 22, 1973, to January 17, 1975, was put in evidence. This appears to have been Ms. Naidoo's job after the birth of the parties' first three children and before the birth of their fourth. After having children, and for a number of years, Ms. Naidoo ran a home-based day care.

- [58] In support of her application for a declaration that this Court did not have jurisdiction over this family dispute or, if it did have jurisdiction, it should not exercise it, Ms. Naidoo filed a February 10, 2022 affidavit, in which she said that following the birth of the parties' children, she gave up her career as a public school teacher to raise them and to support Mr. Naidoo's career. This was an exaggeration; Ms. Naidoo was not qualified as a public school teacher. In her evidence at trial, she said she helped teach at two schools near the family home. Nevertheless, I accept that, to the extent that she could, Ms. Naidoo assisted Mr. Naidoo in his business dealings. She prepared most of the parties' personal and business correspondence. I also accept that she was primarily responsible for the early education of her children.
- [59] Between March and October 1985, Ms. Naidoo attended an eight-month Montessori training course for preschool educators and became certified. Mr. Naidoo was supportive of Ms. Naidoo attending the training course.
- [60] The parties later relied on Ms. Naidoo's Montessori certificate to apply for authority to open and run a preschool for the Tamil community in Lenasia called Tiny Nestlings Pre-Primary school ("Tiny Nestlings"). After the parties sold Tiny Nestlings, they applied for authority to open a senior school in Lenasia that they called Eagle-Wise Academy. Both schools will be discussed later in these reasons.

Family Homes/Property

Mimosa Property

- [61] Mr. Naidoo testified that the parties' first family home was at 25 Mimosa Avenue, ERF 4545, in Lenasia (the "Mimosa Property"). On a date that was unclear on the evidence, the Mimosa Property was registered in Mr. Naidoo's name. He described it as a "beginners" home.
- [62] Mr. Naidoo sold the Mimosa Property in 1982. He testified that the purchaser paid for it partly in cash, and partly by conveying to Mr. Naidoo title to land on Salvia Street, ERF 4016, in Lenasia (the "Salvia Property").

Salvia Property

- [63] Mr. Naidoo testified that he built the parties' second home on the Salvia Property in 1982. I took his evidence to mean that his construction company built the home. He described it as having six bedrooms, four bathrooms, a swimming pool, two lounges, a dining room, a large kitchen, a scullery, a prayer room, a sauna, and separate domestic quarters with a bathroom and double garage. Mr. Naidoo testified, and I accept, that his construction business was thriving when he built the home.
- [64] According to the record of title to the Salvia Property, Mr. Naidoo sold it on March 14, 1995, to Baba Shaik Hoosan Abdul Rahman for ZAR 300,000. I will refer to this sale again later in these reasons.

Kew Property

- [65] Mr. Naidoo testified that he also bought, as an investment, vacant land on Third Avenue in the Kew area of Johannesburg, ERF 232 (the "Kew Property"). According to the title documents, the purchase completed on February 18, 1997. Mr. Naidoo's construction company built a house on the lot.
- [66] The Kew Property was sold on November 7, 2005, for ZAR 800,000. The purchase and sale of the Kew Property occurred after the parties emigrated to Canada.
- [67] It was clear, on both parties' evidence, that although the parties had emigrated to Canada, they regularly returned to South Africa and Mr. Naidoo continued his construction work there.

Pageview Property

- [68] Mr. Naidoo testified that, in January 2005, he bought two parcels of land, ERF 201 and ERF 317, in the Pageview suburb of Johannesburg for ZAR 50. I have earlier defined this as the "Pageview Property". He used some of the proceeds of sale from Eagle-Wise and profits from Des-Neil Construction to build five condominium units on the property.
- [69] Title to the Pageview Property was registered in Ms. Naidoo's name. I will have more to say about dealings with the Pageview Property later in these reasons. The title records show that on July 26, 2019, Ms. Naidoo sold the property to Desigan for ZAR 1,493,000. The sale was registered on March 17, 2021. The sale occurred after the parties separated, and this litigation was commenced.

Myrtle Property

- [70] Mr. Naidoo testified that, using the proceeds of sale from the Kew Property, in 2006, he bought a property at 14 Myrtle Road in Durban for ZAR 700,000 (the "Myrtle Property"). It was intended as a holiday home for the family.
- [71] Title to the Myrtle Property was registered in Ms. Naidoo's and Primmithi's names. Primmithi looked after the property on her parents' behalf. Ms. Naidoo testified that she bought the Myrtle Property, but did not produce any documents to establish that she had done so.
- [72] The Myrtle Property was sold on March 14, 2014, for ZAR 970,000. Primmithi handled the sale, and Angeni was counsel on the transaction. Both received some of the sale proceeds. Mr. Naidoo testified that Primmithi received ZAR 200,000 and Angeni received ZAR 20,000.
- [73] On December 2, 2016, Primmithi deposited \$48,500, the remaining proceeds of the sale of the Myrtle Property, into the parties' joint Royal Bank account in Canada. As discussed below, Mr. Naidoo said he used the money to buy a Kia, the family car owned by the parties on the date of separation. Ms. Naidoo says that Mr. Naidoo took the proceeds from her.

[74] Mr. Naidoo testified that Primmithi was "scared" to pay the money to her parents when the sale closed, due to Ms. Naidoo's gambling. Mr. Naidoo did not say how he knew what Primmithi was thinking. I will return to the concern about Ms. Naidoo's gambling later in these reasons.

The First Divorce

[75] The parties divorced, for the first time, on October 26, 1983. The stated basis for the divorce was "irreconcilable differences". The initiating document, or summons, was prepared by Mr. Naidoo's lawyers. He was the plaintiff, Ms. Naidoo was the defendant. The particulars of the claim in the summons indicated:

The marriage relationship between the parties has reached such a state of disintegration that there is no reasonable prospect of the restoration of a normal marriage relationship between them and the said marriage has irretrievably broken down in that:

The defendant left the common home on 6th August, 1983, and refuses to return to it;

The defendant shows no love or affection for the plaintiff;

The defendant has indicated that she wishes to be divorced from the plaintiff.

[76] Attached to the Summons was an Annexure. It set out the particulars of Mr. Naidoo's claim as follows:

1. The plaintiff is NEELAMAGAN NAIDOO, an adult male builder of 4016 Salvia Street, Extension 3, Lenasia, Johannesburg.
- 2, The Defendant is TINYGEE NAIDOO (born NAIDOO) an adult female housewife of 8 Sparrow Avenue, Lenasia, Johannesburg.
3. The parties were married to each other on the 1st day of April, 1968, in community of property at Johannesburg, which marriage still subsists.
4. The parties are domiciled within the area of jurisdiction of the above Honourable Court.
5. There are four minor children born of the said marriage.
6. [Repeats the particulars of the claim from the Summons]

WHEREFORE plaintiff claims:

1. A Decree of Divorce;
2. An order that custody of the minor children born of the marriage be awarded to the defendant;
3. An order that the plaintiff pay maintenance for the said minor children to the defendant at the rate of R50,00 per month per child;

4. Forfeiture of the benefits arising out of the marriage in community of property;
5. Further or alternative relief.
6. Costs of suit only in the event of the defendant defending this action.

[77] Ms. Naidoo did not defend the claim.

[78] The Final Order of Divorce was issued on October 26, 1983. It ordered:

1. That the bonds of marriage subsisting between plaintiff and defendant be and are her[e]by dissolved;
2. That the [custody] of the 4 minor children be and is hereby awarded to the Defendant;
3. That the Plaintiff pay maintenance for the said children at R[50,00] per month per child;
4. That the Defendant forfeit the benefits of the marriage in community of property.

[79] Mr. Naidoo testified that the parties' divorce was "false" in that the marriage had not disintegrated; they never separated and were always a couple. He said that they divorced solely to change their marital relationship from one in which community of property applied to one in which they held property separately. They did so to protect their family assets from creditors. Thereafter, Mr. Naidoo registered various properties purchased by the parties in Ms. Naidoo's name. In his evidence, Mr. Naidoo also suggested that all future purchased properties were registered in Ms. Naidoo's name. He was not cross-examined on this point.

[80] Ms. Naidoo testified that the divorce was legitimate. She said she sought it to protect her financial interests and the interests of her children. She did not explain why, if that was the case, Mr. Naidoo was the plaintiff.

[81] In cross-examination of Ms. Naidoo, Mr. Naidoo put to her that the first divorce was invalid because, before the divorce, they were not separated for at least 12 months, there was no reference to adultery, or that he had been sentenced to imprisonment or declared a habitual criminal. Ms. Naidoo responded that the divorce was done by the lawyers, and she did not recall what happened in 1983.

[82] There is no evidence that Mr. Naidoo paid the maintenance required by the Divorce Decree. In fact, as discussed below, it would only have been paid for one month as, within weeks of the Divorce Decree, the parties remarried.

Antenuptial Contract ("ANC")

[83] On December 2, 1983, slightly over a month after their divorce, the parties remarried.

- [84] On the same day they remarried, the parties entered into an ANC that, among other things, states that they did not intend community of property to apply to their marriage. The parties disagree about whether the ANC was signed before or after their marriage ceremony. It is unclear what would turn on the timing.
- [85] In any event, in light of my subsequent findings that, after the ANC was signed, the parties did not maintain separate property but operated a joint family business enterprise, I need not determine that issue.
- [86] The ANC was the focus of significant evidence, disagreement, and argument in this trial. Ms. Naidoo seeks to have me apply it to the division of the parties' family property in Canada, instead of dividing their property under the Family Law Act, S.B.C. 2011, c. 25 [FLA]. Mr. Naidoo seeks an equal division of all family property under the FLA.
- [87] The thrust of Ms. Naidoo's argument is that the ANC should govern the division of property in this Canadian divorce proceeding and, since the Agassiz Property and the Pageview Property are registered in her name, she should continue to own them free of any claims from Mr. Naidoo.
- [88] As a result of its importance to this dispute, I will set out the relevant terms of the ANC.
- [89] The ANC says that the parties appeared before Hyman Chaitowitz on December 2, 1983, declared that they wished to be married and contracted and agreed with each other as follows:

FIRST.- That there shall be no community of Property between the said intended Consorts, but that he or she shall respectively retain and possess all his or her estate and effects, moveable and immovable, in possession, expectancy or contingency, or to which he or she has or may have any eventual right or title, as fully and effectually as he or she might or could have if the said intended marriage did not take place.

SECOND.- That the one of them shall not be answerable for the debts and engagements of the other of them; but that each shall be answerable for his or her own debts, contracted before and after the said intended marriage.

THIRD.- That all inheritances, legacies, gifts, or bequests, which may devolve upon, or be left, given, or bequeathed to either of the said intended Consorts, shall be the sole and exclusive property of him or her upon or to whom the same shall devolve or be left, given or bequeathed.

FOURTH.- That each of the said intended Consorts shall be at full liberty to dispose of his or her property and effects, by will codicil or other testamentary disposition, as he or she may think fit.

FIFTH.- That there shall be no community of profit and loss between the said Consorts, but that each of them shall, respectively retain the profits made by or accruing to him or her, and shall in like manner separately and solely bear and sustain the losses happening to him or her during the subsistence of the said intended marriage.

SIXTH.- That the said TINYGEE NAIDOO (born NAIDOO) shall have and continue to hold, possess, and enjoy the sole exclusive and uncontrolled administration and alienation of all the property and effects of which she is now possessed, and entitled to, and of all other property which she may hereafter acquire during the subsistence of the said marriage without interference control or assistance of the said NEELAMAGAN NAIDOO and every power which the said NEELAMAGAN NAIDOO shall, or may have, or be entitled to acquire by virtue of the said marriage, shall be and the same is hereby excluded from the property, estate and effects of the said TINYGEE NAIDOO (born NAIDOO) as fully and absolutely as if the said intended marriage had not taken place.

SEVENTH.-

- (a) That it is further agreed that in consideration of the said intended marriage, that the said NEELAMAGAN NAIDOO hereby gives and donates and undertakes to transfer, at a time convenient to himself, to the said TINYGEE NAIDOO (born NAIDOO) certain piece of land described as Erf 4016 Lenasia Extension 3, Registration Division I.Q., Transvaal, together with all buildings thereon, as also all household effects and fittings presently contained in the building aforesaid.
- (b) An amount of R5,000-00 (FIVE THOUSAND RAND) in cash.

WHICH said settlements the said TINYGEE NAIDOO (born NAIDOO) hereby declared to accept.

UPON all which terms and conditions the said intended CONSORTS declare their intention to become married to the other and each bound himself and herself to all to the other the full force and effect hereof under obligation of their respective persons and property according to Law.

[90] The property referred to in para. 7(a) of the ANC is the Salvia Property.

[91] In the record before me, as part of the ANC, is a Form K declaration by "a person acquiring property in any manner other than by purchase, donation, exchange or partition". The Form K purports to donate the Salvia Property to Ms. Naidoo under the terms of the ANC. The Form K is not signed by Mr. Naidoo, and the value to be assigned to the Salvia Property is blank.

[92] I find on the evidence that the transfer of the Salvia Property to Ms. Naidoo never occurred. As I have said, the Form K transfer document was not signed by Mr. Naidoo. The transfer to Ms. Naidoo was never registered, and Mr. Naidoo denied that he transferred the Salvia Property.

[93] Further, the title documents for the Salvia Property, filed as part of Ex. 110, show that, on March 14, 1995, Mr. Naidoo sold the Salvia Property for ZAR 300,000. This sale occurred 12 years after the date of the ANC, and the purported transfer to Ms. Naidoo, and almost two years after the parties emigrated to Canada.

- [94] The only reasonable inference to draw is that Mr. Naidoo could not have sold the Salvia Property in March 1995 without having title to it. If he had transferred it to Ms. Naidoo under the ANC, title would have been in her name. I find that the Salvia Property was never transferred to Ms. Naidoo.
- [95] The title documents also show that, despite Ms. Naidoo's testimony to the contrary and as set out later in these reasons, the Salvia Property was never subject to a bond or mortgage in 1983 when she said the bond was the reason she separated from Mr. Naidoo and the divorce was initiated. Nor was it subject to a bond when the ANC was signed.
- [96] It is Ms. Naidoo's position that after the ANC was signed, the parties kept their finances separate. The evidence does not support her position. Rather, it appears that the parties were involved in various joint property investments, while at the same time buying property in their own names with funds from sources not proven in evidence.

Foreign Law

- [97] Foreign law is a fact that must be proven by expert evidence. Ms. Naidoo sought to file a letter written by Noa Kinstler, a South African lawyer, purporting to explain the effect of antenuptial agreements under South African law (the "Letter"). Ms. Naidoo testified that Ms. Kinstler was Desigan's lawyer.
- [98] Ms. Kinstler may have acted for Desigan, but it is also clear that she acted for Ms. Naidoo in respect of this family dispute. As Ms. Naidoo's counsel, she exchanged correspondence with Angeni in response to a demand letter that was sent in respect of the Pageview Property. On March 6, 2019, Ms. Kinstler wrote to Angeni to revoke a power of attorney signed by Ms. Naidoo in favour of Mr. Naidoo, one which Ms. Naidoo said she did not recall signing.
- [99] Even more problematic, on April 11, 2022, Ms. Kinstler, acting for Ms. Naidoo, filed a divorce summons in South Africa suggesting that both parties were then living at the Pageview Property and domiciled in South Africa. That information was incorrect. In 2022, Ms. Naidoo was living in Agassiz, and Mr. Naidoo was living in Abbotsford. These proceedings were well underway. Although filed, the summons did not proceed.
- [100] I did not admit the Letter into evidence because Ms. Kinstler, the author, was not impartial. As Ms. Naidoo's advocate, she could not comply with the duty she owed to the court as set out in R. 13-2(1) of the Supreme Court Family Rules. She did not provide the mandatory certification required under R. 13-2(2).
- [101] In her closing submissions, Ms. Naidoo describes the difficulties with Ms. Kinstler's opinion as a "technical" breach. I do not agree. The objectivity of expert evidence is fundamental to the court being asked to rely on it. That is particularly so where the opinion is about foreign law.

- [102] Ms. Kinstler was not in a position to provide an objective opinion, and she did not purport to do so, as she failed to provide the mandatory certification.
- [103] In any event, because I find that the parties did not operate under the ANC while they lived in South Africa, or after their arrival in Canada, and were involved in a joint family business venture, an opinion as to the effect of the ANC is of no assistance to the issues I must decide. Although not necessary in light of this finding, I note that Ms. Kinstler's opinion did not address or opine on the validity of an ANC after a prior marriage and a divorce that appears to have been obtained on misleading grounds. Nor did it opine on the legal implications of the parties' failing to implement the financial terms that formed the basis of their earlier divorce.
- [104] In the absence of an opinion from a South African lawyer dealing with the available grounds for a divorce in 1983, proving foreign law as a fact, and addressing my concern that the terms of the divorce were not followed, I cannot find that the divorce was legally invalid. As is apparent from their remarriage just slightly over a month later, the parties' representation to the court that their marriage had irretrievably broken down was incorrect or untrue.
- [105] Ms. Naidoo testified that the divorce was legitimate and that they "concluded" their first marriage on October 26, 1983.
- [106] Ms. Naidoo's written script said, and she testified, that marriage in community of property was not working for the parties, and she needed to shield herself and her children from the "corrupt" claimant. She left the family home and went to live with her family until the parties remarried. She became concerned about what she described as Mr. Naidoo's "corrupt" business dealings and bad financial decisions. Ms. Naidoo said Mr. Naidoo put their family home at risk due to his involvement in "corrupt dealings with an individual named Joe". Ms. Naidoo said she would not continue the relationship unless she was protected.
- [107] Ms. Naidoo's written script says, "[t]hrough out our marriage the claimant was lazy and always wanted short cuts in business so he rarely signed contracts or kept proper records and would subcontract all work out while he stayed at home. The claimant secured a loan against our family home to fund this venture without informing me." The family home in question was the Salvia Property.
- [108] Ms. Naidoo's script also says that:
- despite numerous red flags, the claimant negligently trusted Joe, who embezzled thousands of rand because the claimant was always lazy in his work and checking his workers and signed over blank checks to Joe to use freely. The bank informed me that our family home was at risk of being auctioned due to unpaid debts, prompting me to use my life savings to settle the debt. This financial betrayal was the breaking point for me, leading to my departure and seeking refuge and safety with my mother.

- [109] Although she testified that some sort of bond, mortgage, or charge had been registered against title to the Salvia Property, and that she received a phone call from a bank that the home was at risk of being sold at auction, there was no documentary evidence to support these allegations. In the title documents produced with respect to the Salvia Property, there is no reference to a charge ever being registered against title.
- [110] There was also no documentary evidence supporting Ms. Naidoo's claim that she used her life savings to settle a debt in respect of the Salvia Property or, in fact, that she had any life savings with which to settle such a debt.
- [111] I accept Mr. Naidoo's evidence that a bank would not have called Ms. Naidoo and told her that the Salvia Property was to be auctioned to pay his or his company's debts. Ms. Naidoo described a male-dominated culture in South Africa. As Mr. Naidoo held title to the Salvia Property, I find on a balance of probabilities that any call from a bank would have been to Mr. Naidoo, the registered owner.
- [112] On all the evidence, I find that the divorce was solely for the purpose of taking the parties' marriage out of the community property regime. It was intended to allow them to hold property separately, to avoid the risk of creditors coming after their family property. The divorce did not occur as a result of a breakdown of the marriage. It is clear that the marriage had not "reached such a state of disintegration that there is no reasonable prospect of the restoration of a normal marriage relationship between them" or that the marriage had "irretrievably broken down". The divorce was obtained for a purpose other than that set out in the divorce summons, and the real purpose was not disclosed to the South African court. The effect of non-disclosure on the South African divorce was not discussed by the parties in their evidence, and, as set out above, there was no evidence from an expert in South African family law about the effect of the non- or misleading disclosure.

Other Property Purchases after the ANC

Tiny Nestlings Pre-Primary School ("Tiny Nestlings")

- [113] After Mr. Naidoo built the Salvia Property, the parties applied to the South African government for a licence to build a preschool. Mr. Naidoo testified that, due to the Apartheid Group Areas Act, No. 41 of 1950, schools were needed for the Tamil community. He said that he got the land for "next to nothing", and they got permission from the South African government to open and run the school. Title to the land was registered in Ms. Naidoo's name.
- [114] Mr. Naidoo said he retained an architect and designed and built Tiny Nestlings, which was founded on October 4, 1991. The Officers of Tiny Nestlings were the parties and Devirani. Tiny Nestlings consisted of a five- or six-room preschool and a hall that was used for children's activities and rented out for weddings and parties.

- [115] Mr. Naidoo testified that he built Tiny Nestlings with his own hands, which I took to mean through Des-Neil Construction. Ms. Naidoo agreed that he built the preschool. The school was named after Ms. Naidoo who went by the name "Tiny". Mr. Naidoo said that Ms. Naidoo and their daughters Devirani and Primmithi were registered as the owners of Tiny Nestlings.
- [116] Ms. Naidoo had been running a daycare from her home for a number of years, and she said that, despite the demand, Lenasia did not have a preschool for Tamil children. She said she assisted in completing the application forms for the registration of the school and then later ran it.
- [117] Mr. Naidoo did not dispute that Ms. Naidoo ran the school, but he said that she did not run it well and, despite the low cost of the land, the school was mortgaged. The parties sold it at a loss to pay off the mortgage, and they used the balance to develop Eagle-Wise.
- [118] Ms. Naidoo denies that the school was losing money or that it was sold at a loss. She questions how, if sold at a loss, they could develop Eagle-Wise. I understood Mr. Naidoo's evidence to mean that Tiny Nestlings was sold for an amount that did not cover the costs of building it, not that the parties actually lost money.
- [119] There are no documents that support either party's version of events. However, there is no dispute that Tiny Nestlings was sold. Nor is there any dispute that although Ms. Naidoo was registered on title as the owner of the land on which Tiny Nestlings was built, the improvements on it were built by Mr. Naidoo and/or his company. In the result, I conclude, on a balance of probabilities, that Tiny Nestling's was a joint family business venture, and the registered title did not reflect actual ownership.
- [120] I also accept, on a balance of probabilities, Mr. Naidoo's evidence that if the parties truly intended to keep their property separate under the ANC, he would not have improved the land to Ms. Naidoo's benefit.
- [121] On July 15, 1993, after the Naidoo family immigrated to Canada, a Certificate of Registration for Tiny Nestlings was issued under the South African Indian's Education Act, 1945, No. 61 of 1965.
- [122] In the disclosed documents is a letter dated November 30, 1993, purportedly signed by Mr. Naidoo as the Chairman of Tiny Nestlings, indicating that Ms. Naidoo was employed by it from 1988-1993. For the first three years of that period, she was a teacher; for the balance, the principal.
- [123] Mr. Naidoo said that he did not sign the letter, and that Tiny Nestlings was not in operation until after 1988. I suspect, but need not find, that the letter was drafted by Ms. Naidoo as part of her attempt to have her credentials recognized in Canada. Nothing turns on whether Mr. Naidoo signed it.

- [124] On September 9, 1994, the purchaser of Tiny Nestlings wrote that Ms. Naidoo was a teacher and principal at the school between January 14, 1988, and November 30, 1993. Ms. Naidoo did not testify about why this letter was sent. It may have related to the parties' immigration application. It was likely inaccurate.

Eagle-Wise Academy ("Eagle-Wise")

- [125] Mr. Naidoo testified that the parties used the balance of the proceeds of sale from Tiny Nestlings to develop Eagle-Wise. The shortfall in the cost of building the school was supported by funds from Des-Neil Construction. As was the case with Tiny Nestlings, the land for Eagle-Wise was obtained from the South African government and title to it was registered in Ms. Naidoo's name. A school consisting of about 10 classrooms, a computer room, and administration offices, was built on the land by Des-Neil Construction. Mr. Naidoo also built a cottage in which the parties lived.
- [126] Mr. Naidoo testified that Eagle-Wise was profitable when it opened but, things deteriorated over time and the costs of paying the teachers and the principal were not covered by the tuition fees. Mr. Naidoo said that Eagle-Wise was sold at a loss.
- [127] Ms. Naidoo does not dispute that Mr. Naidoo built Eagle-Wise, but she testified that the parties got the land because of her Montessori training, and she paid for it. Ms. Naidoo testified that the school was originally intended to be an Indian classical dance school and that she received donations from the community to start it. She said that she also took the money from the sale of the Salvia Property to build the school. As the Salvia Property was not sold by Ms. Naidoo, this cannot be the case.
- [128] There are no documents in evidence to establish that Ms. Naidoo paid for the land on which Eagle-Wise was built. In any event, I find, on a balance of probabilities, that Eagle-Wise was also a joint family business venture. Title to the property on which Eagle-Wise was built did not reflect its actual ownership. Mr. Naidoo and/or his construction company improved the vacant land by building the school, and it was the improved land and the operating school that was subsequently sold.
- [129] In August 2001, Ms. Naidoo agreed to sell Eagle-Wise for ZAR 1,250,000. Ms. Naidoo testified that she negotiated the sale. However, she acknowledged that Mr. Naidoo became involved in the negotiations and accepted a reduced price of ZAR 1,000,000. Ms. Naidoo testified that they lost money because Mr. Naidoo "undermined" her deal. Mr. Naidoo testified that he accepted a lower price because the purchasers were disputing the condition of some of the chattels, including computers, which were included as part of the purchase. I find that both parties were involved in negotiating the sale contract.

[130] As a term of the agreement, the parties continued to occupy the cottage on the land, rent-free, until they moved into the Pageview Property. There is a document in the materials dated January 1, 2005, reflecting that Ms. Naidoo sold her membership, which I take to mean shares, in Eagle-Wise.

[131] Eagle-Wise is still operating.

Pageview Property

[132] Mr. Naidoo testified that he took the money from the sale of Eagle-Wise and bought two back-to-back stands (pieces of land) in the Pageview suburb of Johannesburg for ZAR 50,000. Each lot was on a different street. The first piece of land had an address of 26-20th Street, ERF 301, and the second, 25-21st Street, ERF 317. Based on the property report in the documents, the Pageview Property was sold to Ms. Naidoo on January 27, 2005.

[133] Mr. Naidoo testified that the proceeds from Eagle-Wise were insufficient to buy the stands and finish the buildings on the Pageview Property. He says that he used Des-Neil Construction funds to complete the buildings. In his amended notice of family claim, Mr. Naidoo claims equal division of the Pageview Property.

[134] Mr. Naidoo designed the buildings with the assistance of an architect, and Des-Neil Construction built five units in two separate buildings on the land. One building had three units, the other had two. Mr. Naidoo testified that each unit had three bedrooms, a lounge, and a kitchen.

[135] Ms. Naidoo testified that she paid for the Pageview Property and funded the development, which was built according to her directions. Title to the property was registered in her name, but as with both Tiny Nestlings and Eagle-Wise, the five-units constructed on it were built by Des-Neil Construction. Ms. Naidoo did not dispute that Mr. Naidoo built the buildings. In fact, during her evidence, she was highly critical of Mr. Naidoo for not obtaining the necessary plan approvals.

[136] Mr. Naidoo testified that he built the residences on the Pageview Property so that, if anything happened to him or his wife, the children would have a place to live in South Africa. Mr. Naidoo testified that he intended the parties to have one of the units and for each of their four children to have one of the other units. At some point, Desigan moved into a unit with his then wife, but the parties' daughters have never moved into the remaining three units.

[137] Initially, the Pageview Property was used as a holiday/tourist rental. Desigan was involved in having it approved and rated for that purpose.

[138] Later, the units were converted to residential units and rented to longer-term tenants. On a date that was not clear in the evidence, Mr. and Ms. Naidoo, who were in Canada, left Desigan in charge of renting the Pageview Property units and remitting the rent to them in Canada. He resided in one of the units rent-free. On another date that was again not clear in

the evidence, Mr. Naidoo testified that Desigan stopped remitting the rent to his parents, although based on Ms. Naidoo's Canadian bank records, he may have remitted some rent to his mother. This was not explored in cross-examination of Ms. Naidoo.

[139] Mr. Naidoo testified that he demanded that Desigan remit the rent. He told Desigan that he did not need to remain in the property and should get another job. Mr. Naidoo described Desigan as lazy and said that collecting the monthly rent for five units was not a full-time job. This caused a rift in their relationship. Also contributing to the father/son rift was the fact that, within six months, Desigan's first marriage ended in divorce. Mr. Naidoo testified about the cost of the wedding. He said that Desigan's wife left him because he was lazy.

[140] In the absence of any banking records, it is not possible to determine with certainty the source of the funds used to build the apartment units on the Pageview Property. However, I find, on a balance of probabilities and based on all of the evidence, that the Pageview Property was paid for from the family's joint business funds and, more particularly, from the sale proceeds of Eagle-Wise and Des-Neil Construction funds. I accept that Des-Neil Construction built the five residences on the Pageview Property. I conclude that the parties' investment in the Pageview Property was yet another example of a joint family business enterprise. The value of the vacant land was improved considerably through Mr. Naidoo's construction efforts.

[141] Also, on a date that was not clear in the evidence, but which appears to have been before 2015, the Pageview Property was listed for sale with Re/Max for ZAR 4,500,000. The listing agreement was not in evidence, but the advertising material indicated that the then total rental income for the three units in the first building was ZAR 20,000 a month, and ZAR 14,000 a month for the two units in the second building. In both cases, the advertising material indicated that the rentals could be higher. In total, the Pageview Property generated annual income of ZAR 368,000.

[142] The parties asked Desigan to deal with the sale, but no offers were received. Mr. Naidoo testified that he was concerned about the lack of interest, and so, without identifying himself, he called the listing realtor and, on another occasion, had someone else call the realtor on his behalf. Both were told that the Pageview Property was no longer for sale.

[143] According to a witnessed agreement entered into between Ms. Naidoo and Mr. Naidoo, purportedly on September 18, 2015 (Ex. 34) (the "2015 Agreement"), the parties agreed to sell the Pageview Property and recognized that both parties had contributed to the construction of the buildings and jointly maintained the properties. Ms. Naidoo agreed to:

1. [R]elinquish 50% of her rights, title and interest to erf 301 and 317 Pageview to Neelmagan Naidoo with immediate effect and to transfer 50% of the property to Neelmagan Naidoo.
2. The parties further agree that Neelmagan Naidoo had incurred expenses relating to the maintenance and building costs to the aforesaid properties in the amount of R1 500 000,00 (one million five hundred thousand rands) to date.

3. The parties have further agreed that the current market value of the property is R3 000 000,00 (three million rands) and they have mandated their son, Desigan Naidoo to sell the property.
4. In the event that the property is sold Tinygee Naidoo has agreed to pay Neelmagan Naidoo the amount of R1 500 00,00 from the proceeds of the purchase price.
5. It is further agreed that in the event that the property is sold for more than R3 000 000,00 (three million rands), then the excess amount will be to the benefit of Desigan Naidoo and the parties hereto agree that the excess amount will be paid to Desigan upon transfer of the aforesaid properties.

[144] I note that in the 2015 Agreement, Mr. Naidoo's first name is misspelled.

[145] Ms. Naidoo denies that she signed the 2015 Agreement.

[146] The documentary record discloses that, on October 25, 2021, Angeni emailed a copy of the 2015 Agreement to a lawyer named Horoon Wadee and sought his "confirmation in respect of the signatures etc."

[147] On April 12, 2022, Angeni followed up on her initial email.

[148] On April 13, 2022, Mr. Wadee wrote to Angeni advising that he was unable to locate the file, as his firm had moved offices in 2017. He said it was "extremely difficult to say with certainty" that the agreement was prepared by his firm and he could not confirm the witness signatures on the document as most of the staff in 2015 left the firm when it relocated. He wrote:

We can however recall meetings around 2015 at our offices with your parents in that they were looking to sell the house in Pageview as they had no intention to come back to South Africa. Your brother who was living in the property was to secure a buyer at the time and he would liaise further with us.

Your brother would have more information that you may require herein.

[149] On April 18, 2022, Angeni wrote to Mr. Wadee, advising that she had discussed Mr. Wadee's response with her father. She advised that her father had located a special Power of Attorney prepared on the same date as the visit to Mr. Wadee's offices to sign the 2015 Agreement. It provided Desigan the power to sell the Pageview Property on his parents' behalf. There is no further response from Mr. Wadee in the documents.

[150] Mr. Naidoo testified that the 2015 Agreement was drawn up by Mr. Wadee and that the parties entered into it because Desigan was not selling the Pageview Property. Desigan made excuses that the property was advertised but there were no buyers. Mr. Naidoo was suspicious because when he and another contacted the realtor, they were told that the sellers had changed their minds about selling. He testified that the 2015 Agreement would provide Desigan with an incentive to sell the Pageview Property for the best possible price.

- [151] Pursuant to the terms of the parties' signed Document Agreement, filed as Ex. 49, documents were sent or delivered on the dates set out, and the authors were authorized to sign them. The Document Agreement applies to the 2015 Agreement. The correspondence exchanged between Angeni and Mr. Wadee is hearsay, but it tends to support Mr. Naidoo's evidence and recollection.
- [152] On the best available evidence, I find on a balance of probabilities that the 2015 Agreement and the Power of Attorney in favour of Desigan to sell the Pageview Property were signed by both parties on September 18, 2015. The documents are consistent with the evidence that the Pageview Property was listed for sale and that Desigan was responsible for facilitating that sale. It is also consistent with the facts I have found about the nature of the Naidoo's joint family business enterprise.
- [153] Also, in the documentary record and marked as Ex. 33, is a copy of another agreement regarding the Pageview Property purportedly entered into between the parties on February 27, 2018 (the "2018 Agreement"). The recitals include that ERF 317 and ERF 301 Pageview were registered in Ms. Naidoo's name but that both parties had contributed to the construction of the buildings on the Pageview Property and jointly maintained them. Ms. Naidoo agreed to:
1. [R]elinquish 50% of her rights, title and interest to erf 301 and 317 Pageview to Neelamagan Naidoo with immediate effect and to transfer 50% of the property to Neelamagan Naidoo.
 2. The parties further agree that Neelamagan Naidoo had incurred expenses relating to the maintenance and building costs jointly with Tinygee Naidoo of the said properties.
 3. The parties have further agreed that the said properties will be sold at the current market value assessed at the time of the sale of the said properties.
 4. In the event that the property is sold. Tinygee Naidoo has agreed to pay Neelamagan Naidoo 50% from the proceeds of the purchase price.
 5. Tinygee Naidoo and Neelamagan Naidoo further agree to revoke, cancel and terminate an[y] previous agreements related to the said properties prior to the 26th of February 2018.
- [154] Mr. Naidoo testified that when the 2018 Agreement was prepared, Ms. Naidoo also appointed him under a special power of attorney as her agent for the purpose of selling the Pageview Property. Mr. Naidoo said that the documents were signed to ensure that the Pageview Property was sold, but not in an underhanded way. He testified that Angeni drafted the documents, which were witnessed by lawyers in a nearby office. Ms. Naidoo said that she did not remember seeing or signing the documents. She described the documents as illegal and suggested that they were forged.

- [155] I find that it is likely that the parties signed the 2018 Agreement and the special power of attorney. This would be consistent with Mr. Naidoo's frustration that the Pageview Property was not being sold. Nevertheless, in light of my finding that the Pageview Property was a joint family business venture, I need not determine this issue.
- [156] According to the title documents in evidence, Ms. Naidoo purportedly sold the Pageview Property to Desigan for ZAR 1,493,000 on July 26, 2019, although the transfer date was listed as March 17, 2021. Mr. Naidoo says that if it was sold at that price, it was at a significant undervalue. However, there is no evidence that Desigan paid Ms. Naidoo anything for the Pageview Property if, in fact, it was sold to him.
- [157] Ms. Naidoo has not provided any documentary evidence about the sale to Desigan. She has also not provided any banking records showing a receipt of payment from him. Her Financial Statement after the transfer date does not reflect any cash in her bank accounts.
- [158] Of particular note is the fact that the sale purportedly occurred just after Ms. Naidoo filed a June 21, 2019 counterclaim in this action, in which she sought an interim order pursuant to s. 90 of the FLA granting her exclusive occupancy of the Pageview Property and its contents, pending trial or consent agreement of the parties. She did not thereafter disclose the sale of the Pageview Property. Seeking an exclusive occupancy order is inconsistent with her position that the Pageview Property was solely hers.
- [159] The purported transfer to Desigan was also registered more than a year before Ms. Naidoo's counsel sought an interim order under s. 91 of the FLA restraining Mr. Naidoo from transferring property in which Ms. Naidoo may have an interest, and the parties consented to a mutual restraining order. Ms. Naidoo did not disclose to Mr. Naidoo, when consenting to a mutual restraining order, or thereafter, that she purportedly sold the Pageview Property to Desigan. Mr. Naidoo learned of it just before trial.
- [160] When she was asked about the transfer of the Pageview Property in her evidence, Ms. Naidoo gave confusing evidence about the date. She suggested it was done in 2018 to protect herself. She also suggested that the Pageview Property was still hers because she had conveyed it to her son, and she could still have a say in it. Her evidence was non-sensical. She also testified that, for property tax purposes, the two stands making up the Pageview Property had been combined and that the value assigned to both was the previous value for only one of the stands. I agree with Mr. Naidoo that this seems highly unlikely and that Johannesburg was unlikely to forego the property taxes on one of the stands.
- [161] In any event, I find that the sale of the Pageview Property to Desigan was an improper transfer of family property in dispute in this action. Ms. Naidoo disposed of a family property without advising Mr. Naidoo that she had done so and at a value that is not justified in the evidentiary record. However, pursuant to s. 109 of the FLA, this Court has no jurisdiction over property in South Africa. As a result, an adjustment will be required to account for this sale against the family property over which this Court has jurisdiction, in particular, the Agassiz Property. Ascertaining the amount of that adjustment will be

discussed later in these reasons.

Immigration to Canada

[162] Both parties agreed that they came to Canada due to the uncertainty about South Africa's future after the end of Apartheid. Ms. Naidoo testified that South Asian South Africans had joined Black South Africans in the fight for freedom from White rule. The country was in turmoil, and many were expecting a bloodbath. The Naidoo's were concerned about their daughters. They applied to immigrate to Australia or Canada. Only Canada accepted them. As I have said, they came under a Canadian entrepreneurial program.

[163] At some point after their arrival, they incorporated Naidoo Enterprises Canada. There is no evidence about the date of its incorporation or its share structure.

[164] In the written script from which Ms. Naidoo testified, she says that she was the single driving force behind the application to come to Canada. I accept, on a balance of probabilities, that it was a joint decision. However, I accept that Ms. Naidoo completed the paperwork, as that was her role in the parties' relationship.

[165] Mr. Naidoo says that Canada accepted their application on the strength of his history as a builder and entrepreneur in South Africa. Ms. Naidoo agreed that the immigration application was filed in Mr. Naidoo's name. As set out in the script of her evidence:

The only reason the claimant's name appears on anything is because I propped him up on the immigration application, in those years, and today the husband is given more importance and status, women are treated like second-class members of society, the claimant made wide sweeping claims of being the sole breadwinner and provided zero evidence and his word is [taken] over mine. Because the immigration process puts more importance on the husband. I had to continue to put his name on items to get our immigration sorted.

[166] If she "propped" him up on the immigration application, Ms. Naidoo may well have misled Canadian Immigration officials. The immigration application ought to have been produced together with the decision to accept the Naidoo Family and any applicable conditions.

[167] I find, on a balance of probabilities, that the family immigration application was accepted on the strength of Mr. Naidoo's construction background. Ms. Naidoo acknowledged as such during cross-examination when she agreed that it was Mr. Naidoo who was assessed for immigration purposes. I also find, on a balance of probabilities, that it was Mr. Naidoo's experience as a building contractor that factored strongly into the assessment process.

[168] All of the Naidoo family, except Devirani, landed in Toronto on July 20, 1993. Shortly thereafter, they moved to the Lower Mainland. Their immigration papers were received sometime between July and December 1993. Devirani came to Canada at a later date.

[169] The parties expected all of their children to contribute to the family's living costs in Canada.

Purchase of the Ticketmaster Franchise

- [170] Ms. Naidoo testified that after the family's arrival in Canada, Primmithi was the first of their children to find work. She was a trained speech and hearing therapist, and she got a job with the Fraser Academy, a private school specializing in teaching children with learning disabilities. Desigan was still in school. Angeni was unable to find work. Primmithi's income contributed to the mortgage on the Coquitlam Property described below.
- [171] On a date that was not clear in the record, but appears to have been in 1994, Ms. Naidoo said that she bought a Ticketmaster franchise in the Coquitlam Centre for Angeni to run. Mr. Naidoo testified that he bought the Ticketmaster franchise using his own funds. There were no documents in evidence with respect to the Ticketmaster purchase. On the evidence, it appears that it was bought for about \$20,000. Both stories cannot be true, but in light of my other findings in this case, I need not resolve this specific difference in their evidence. I find that this purchase was part of their joint family business enterprise and that it was bought with joint family funds.
- [172] Angeni ran the franchise for about five years. It closed because the Eaton's store in which it was located was closing.
- [173] Ms. Naidoo applied for certain daycare jobs. She agreed that in March 1995, her Montessori qualifications were assessed by the Provincial Child Care Facilities Licensing Board. She was not given full equivalency. She was given equivalency in two areas: interpersonal skills, community relations, and interacting with families; and first aid. To work in the field, she would have been required to complete further training. She did not do so.

Immigration Follow-up

- [174] On January 3, 1996, Mr. Naidoo received a letter from Canada Immigration regarding compliance with the terms and conditions for his admission to Canada under the entrepreneur category, and his grant of permanent residence on July 20, 1993. The letter indicated that Mr. Naidoo had been a resident of Canada for over 29 months and asked him to advise of his business activities within 30 days.
- [175] The letter enclosed the text of the applicable regulation as of February 1, 1993. Attached was a list of the documents that were requested and a form for his completion. The letter indicated that once the documents and the form had been reviewed, he would be contacted. There are two copies of the letter in the parties' disclosure; both are incomplete. The terms and conditions were apparently also imposed on the other members of the Naidoo family.
- [176] The enclosed regulation provided:

5. TEXT OF REGULATIONS

5.1 REGULATION 23.1(1) C86 - 1ST FEBRUARY 1993

23.1(1) Entrepreneurs and their dependants are prescribed as a class of immigrants in respect of which landing shall be granted subject to the condition that, within a period of not more than two years after the date of an entrepreneur's landing, the entrepreneur

- a) establishes, purchases or makes a substantial investment in a business or commercial venture in Canada so as to make a significant contribution to the economy and whereby employment opportunities in Canada are created or continued for one or more Canadian citizens or permanent residents, other than the entrepreneur and the entrepreneur's dependants;
- b) participates actively and on an-going basis in the management of the business or commercial venture referred to in paragraph (a);
- c) furnishes, at the times and places specified by an immigration officer, evidence of efforts to comply with the terms and conditions imposed pursuant to paragraphs(a) [sic] and (b); and
- d) furnishes, at the time and place specified by an immigration officer, evidence of compliance with the terms and conditions imposed pursuant to paragraphs(a) [sic] and (b).

[177] The Ticketmaster purchase did not qualify as the type of investment contemplated by the regulation as it only provided employment for Angeni, not other Canadians, and it involved a relatively small investment of \$20,000. In the written statement of her evidence, Ms. Naidoo said that the proceeds of sale of the Ticketmaster were about \$30,000.

[178] Shortly after receipt of Immigration's letter, Mr. Naidoo met with Andrew Wlodyka, a lawyer, and retained him to seek to have the immigration terms and conditions imposed on the family removed.

[179] It also appears that Immigration's letter spurred the Naidoo family into action because, on January 29, 1996, Mr. Wlodyka sent Mr. Naidoo information about a florist business that was for sale.

[180] In the written statement of her evidence, Ms. Naidoo said that she was the one who looked for a business to get the immigration conditions removed. She said she had an offer on a flower shop that she thought Mr. Naidoo would be able to run if he was permanently in Canada, but he was not interested in being in Canada permanently and she saw other complications with the deal. She testified that she ended it. It was not clear whether the florist business Ms. Naidoo testified about is the same as the one that Mr. Wlodyka introduced Mr. Naidoo to.

[181] Ms. Naidoo's written statement suggests that the offer on the flower shop that she referred to predates the purchase of the Ticketmaster franchise. In any event, apart from Mr. Wlodyka's letter about a florist business for sale, there are no documents in evidence about Ms. Naidoo's offer to purchase a florist business (which was later terminated).

Purchase of Coquitlam Property

- [182] In 1995, the parties purchased a combined residential/commercial space located at 1121 Brunette Avenue in Coquitlam (the "Coquitlam Property").
- [183] Ms. Naidoo said that she and Desigan found the Coquitlam Property. It had residential premises on the top floor and commercial space, previously operated as a café, on the bottom floor. She said that she viewed the property with her three children, and although Angeni and Primmithi did not like it, she and Desigan did. The Coquitlam Property was purchased.
- [184] Over time, and sometime after the Ticketmaster franchise was sold, the commercial space on the bottom floor of the Coquitlam Property was operated as a day spa by Angeni and a partner. In the documents referred to by Mr. Naidoo in his evidence, there is a May 30, 2001 business plan for the day spa. After a number of years, the day spa closed.
- [185] On a later date that was also unclear on the record, the ground floor was operated by Desigan as a convenience or thrift store. It was unsuccessful, and, gradually, the ground floor was converted into a number of residential rental units, and an additional rental unit was built on the second floor.
- [186] Although there is no copy of the agreement of purchase and sale for the Coquitlam Property in evidence, I was able to piece together the terms of the purchase from the closing reporting letter from the conveyancer and the mortgage documents.
- [187] The Coquitlam Property was purchased for \$170,000, and the closing amount, after adjustments, was paid with \$110,291 in cash and a \$62,500 mortgage the parties obtained from the Greater Vancouver Credit Union ("GVCU").
- [188] The purchase closed on May 27, 1996. The registered legal ownership of the Coquitlam Property was unclear on the record. However, the borrowers on the Mortgage were Mr. Naidoo, Ms. Naidoo, Angeni, and Primmithi with a collective, undivided 3/10 interest and Naidoo Enterprises Ltd. (Inc. No. 0487957) ("Naidoo Enterprises") with an undivided 7/10 interest, suggesting that the registered ownership was as set out in the Mortgage. Ms. Naidoo signed the mortgage as Mr. Naidoo's power of attorney as he was in South Africa when the purchase closed. Mr. Naidoo testified that he was winding up his business interests there. Primmithi and Angeni signed on their own behalf, and Angeni signed as an authorized signatory for Naidoo Enterprises.
- [189] That title to the Property was held on the same basis as set out in the Mortgage is confirmed by a July 18, 2013 email, marked as part of Ex. 73, sent by Tim Leong, of GVCU, to C. Keri Martens, the conveyancer the Naidoos used for the sale of the Coquitlam Property. It said:

if they are listing [the Coquitlam Property] for sale right away there isn't really any point for us to re-document the mortgage. We do acknowledge that Naidoo Enterprise Ltd will be removed from title and that the property will be owned solely by Neelamagan Naidoo and Tinygee Naidoo. We still have documentation that the remaining owners of the property are obligants to the mortgage.

Is there anything else that you would require from the Credit Union to complete the title transfer? Please sent us a copy of the new title once everything has been registered at the land title office

[190] The evidence is unclear about whether title to the Coquitlam Property was transferred into the Naidoo's names before it was sold, but it is likely to have been.

[191] As I understood Mr. Naidoo's evidence, Naidoo Enterprises was incorporated, on a date that was unclear in the evidence, for the purpose of holding the family's corporate investments in Canada. The company was dissolved by way of a voluntary dissolution on April 7, 2014, as confirmed by a Certificate of Dissolution marked as part of Ex. 73.

[192] Ms. Naidoo testified from her written script that she was the source of all of the money for the purchase of the Coquitlam Property and its subsequent renovations.

[193] Ms. Naidoo said that she first came to Canada in the early 1990s with her mother to visit an uncle in Toronto. At the time, she opened an account with the Royal Bank of Canada ("RBC"). She testified that, over time, she brought cash from South Africa and deposited it into the RBC account. She said that the cash was her employment earnings and profits from the sale of certain properties that she owned in South Africa.

[194] Mr. Naidoo vigorously disputes her evidence and points to the fact that Ms. Naidoo has not disclosed any financial records to confirm that she was the sole source of the funds in the RBC account (which were used to purchase the Coquitlam Property). He testified that he and his business were the source of the funds. Ms. Naidoo did produce bank records from RBC showing deposits over time before the family emigrated from South Africa, but no records as to the source of those funds.

[195] As set out later in these reasons, I do not accept, on a balance of probabilities, that all of the money in the RBC account was Ms. Naidoo's or that the funds used to purchase the Coquitlam Property were hers. Ms. Naidoo's evidence in that regard was not credible and contradicted by her earlier affidavits. I find that it is probable that the funds were from the Naidoo's joint family business enterprise.

Sale of the Coquitlam Property

[196] In 2014, the parties sold the Coquitlam Property to a developer for \$850,000. According to the vendor's statement of adjustments, after payment of commissions and various adjustments for taxes and other utilities, the parties received \$823,857.09 from the purchaser.

[197] Of that amount, \$307,069.91 was transferred to pay the balance of the purchase of 6897 Fraser Drive in Agassiz, BC (the "Agassiz Property"). After payment of the usual adjustments and legal fees for the sale of the Coquitlam Property, \$490,452.74 remained from the sale. A cheque in that amount was issued in both parties' names. From that amount, it appears that Mr. Naidoo received a bank draft for \$405,000 and, on the same day, a deposit of \$85,000 was made into Ms. Naidoo's bank account. Ms. Naidoo says that she was shortchanged by Mr. Naidoo, but as this was not pleaded in Ms. Naidoo's counterclaim or put to Mr. Naidoo in cross-examination, I cannot make a finding in that regard.

Purchase of Agassiz Property

[198] After property transfer taxes, the usual closing adjustments, and conveyancing fees, the total cost of the Agassiz Property was \$312,069.91. A \$5,000 deposit was paid when the offer was made, and the remaining \$307,069.91 was directly transferred from the proceeds of the sale of the Coquitlam Property. Title to the Agassiz Property was registered in Ms. Naidoo's name.

[199] In her written script, Ms. Naidoo says that she and Desigan intended to purchase the Agassiz Property together. The offer was made in both of their names.

[200] In her October 13, 2020 affidavit, Ms. Naidoo said:

I purchased the Agassiz Property with an equal contribution from our son, Desigan. It was agreed between myself and Desigan, that the Agassiz Property would be in my sole name as I would qualify for the Seniors Grant.

[201] In her August 17, 2021 affidavit, Ms. Naidoo said that she shared her portion of the net sale proceeds of the Coquitlam Property with Desigan. It was not clear whether she was referring to the \$85,000 or to the \$307,069.91. She then went on to repeat that she purchased the Agassiz Property with an equal contribution from Desigan, but that they agreed the Agassiz Property would be in her sole name as she would qualify for the Seniors Grant while he worked in South Africa.

[202] Ms. Naidoo's sworn affidavit evidence was untrue. It was only one of several different versions that she gave of the events. Although Ms. Naidoo refers to "her share" of the proceeds, the parties had not entered into a written agreement under s. 93 of the FLA, and there was no evidence that they intended to separate when they moved into the Agassiz Property. Ms. Naidoo testified that, on the sale of the Coquitlam Property, Mr. Naidoo intended to return to South Africa. He denied that was his intent.

[203] They did not separate but lived in the Agassiz Property, as their family home, for over four years after it was purchased and before their October 2018 separation.

[204] In the Taylor Order, Ms. Naidoo was ordered to produce any documents showing that Desigan had contributed to the purchase of the Agassiz Property. Ms. Naidoo did not produce any such records. In other materials, including the written script of her evidence,

Ms. Naidoo changed her story and said that Desigan was entitled to half of the value of the Agassiz Property, not because he had contributed to its purchase, but because she felt badly that he had been left with the responsibility for managing the Coquitlam Property when the parties returned to South Africa for extended periods. In the written script of her evidence, Ms. Naidoo says that she and Mr. Naidoo promised Desigan that if he looked after the Coquitlam Property, it would be his. This latter evidence was not put to Mr. Naidoo during his cross-examination. I do not accept her evidence in that regard. Because of the antipathy between father and son, it was improbable that Mr. Naidoo would have agreed to gift Desigan the Coquitlam Property.

- [205] There is no documentary evidence that Desigan contributed an equal, or any, amount to purchase the Agassiz Property. The reporting letter on the closing of the sale of the Coquitlam Property indicated that \$307,069.91 was transferred directly for the purchase of the Agassiz Property.
- [206] In Ms. Naidoo's Financial Statements, Ms. Naidoo lists a debt to Desigan of half of then most-recent assessed value of the Agassiz Property. As the assessed value increased, so did the debt she reflected in her successive Financial Statements.
- [207] The fact that Ms. Naidoo may feel a moral obligation to give Desigan some portion of the value of the Agassiz Property does not create a debt obligation enforceable in law, and Desigan makes no such claim in these proceedings.
- [208] There is no appraisal of the Agassiz Property in evidence. In her filed trial management brief, Ms. Naidoo suggested that the parties use the most recent tax assessed value of the parties' real estate, increased by 15%, to arrive at the value of both the Agassiz and Pageview Properties. There is no justification for such an approach. I have no way of determining whether it would reflect the true market value of either property.
- [209] The assessed value of the Agassiz Property has gone up steadily. In the assessments attached to Mr. Naidoo's Financial Statement, sworn July 3, 2023, the Agassiz Property was assessed, as of July 1, 2022, for 2023 property tax purposes at \$819,000. The assessment on July 1, 2023, for 2024 property tax purposes was \$823,000.
- [210] In October 2018, Ms. Naidoo said that she signed a listing agreement for the Agassiz Property with Dan Cook. A copy of a listing in the documents indicates a list price of \$699,000. The date of the listing is not clear. According to Ms. Naidoo, the listing was terminated as a result of the CPL that Mr. Naidoo registered against title.
- [211] As I have said, Mr. Naidoo denied that he intended to return to South Africa. He testified that he intended to use the net cash he received from the sale of the Coquitlam Property to cover the parties' living expenses and to fund the parties' retirement, including their travel. In evidence are documents indicating that Mr. Naidoo paid for the water, internet, and property taxes for the Agassiz Property. He also testified that he paid for the family's Netflix account, their cell phones, and bought groceries and furnishings. He invested in garden

tools and worked in the garden, including planting fruit trees and building a wishing well. He said he paid for their entertainment, as well as travel to and from South Africa, although the evidence was not clear about how often they travelled.

- [212] Mr. Naidoo explained that he managed the cash portion of the proceeds of sale of the Coquitlam Property because he and his daughters were concerned that Ms. Naidoo had a serious gambling problem.
- [213] In evidence are documents showing a number of large, same-day, withdrawals by Ms. Naidoo at casinos in both South Africa and Coquitlam. For example, Ms. Naidoo's bank records from her First National Bank Account in South Africa show the withdrawal of ZAR 89,000 in cash at casinos between April 29, 2016, and January 28, 2017. Based on current exchange rates, that is approximately \$6,775.
- [214] Ms. Naidoo's Canadian bank records, produced and entered by Mr. Naidoo, show same-day cash withdrawals totalling more than \$2,800 on May 3, 2010, at the Chances Casino in Chilliwack and at a nearby ATM on Yale Road. A similar pattern of withdrawals occurred on August 20, 2019. While these amounts may not be high to many, they are significant in terms of Ms. Naidoo's low income as reflected in her Financial Statements. They are also significant because, before Justice Taylor, Ms. Naidoo said that she could not make ends meet and that she and Desigan were using the food bank to survive.
- [215] These withdrawals provide evidence that Ms. Naidoo was gambling. When Mr. Naidoo cross-examined her about her gambling, she became defensive and said that they both gambled. She then put in evidence copies of Mr. Naidoo's player's cards from various casinos. Mr. Naidoo agreed that he gambled but said it was the level of Ms. Naidoo's gambling that was a concern to him (and to his daughters).
- [216] I need not determine if Mr. Naidoo was right about whether Ms. Naidoo had a gambling problem, or the extent of it. It is only relevant to the credibility of Mr. Naidoo's evidence that he was legitimately concerned and wished to prevent Ms. Naidoo's access to large amounts of cash. I accept that his evidence was credible and that he believed there was a problem. I find that to remain in the Agassiz Property, and to cover their living expenses and travel, the parties would have had to draw down on the cash held by Mr. Naidoo. Their modest pension income, as set out in their Financial Statements, was insufficient to support them, their household expenses, and their travel.
- [217] In any event, the parties and Desigan all moved into the Agassiz Property together at the end of June 2014. They lived in it as their family home until October 23, 2018, the date of separation. According to Ms. Naidoo's evidence, Devirani also lived in the Agassiz Property for about three years during that time.
- [218] During the time they all lived together, Mr. Naidoo underwent significant heart bypass surgery and faced other health challenges. Ms. Naidoo testified that she nursed him through it all.

- [219] Mr. Naidoo submits that the Agassiz Property is family property and should be divided equally. He also submits that all the family property, including the cash he had available to him on the date of separation, should be divided equally.
- [220] Apart from the Agassiz Property, the parties have no Canadian real property to divide. They owned the Pageview Property in South Africa, but, as discussed, it was registered in Ms. Naidoo's name until she purportedly transferred it to Desigan.

Separation

- [221] On October 4, 2018, a call was made to the RCMP. While Desigan was in South Africa, Devirani, who, for a number of years, had been living with the parties in an upstairs bedroom at the Agassiz Property, moved into Desigan's basement suite. Before Desigan returned, Ms. Naidoo tried to persuade her to move back into an upstairs bedroom and Devirani resisted.
- [222] On his return, Desigan wanted Devirani out of his suite. Ms. Naidoo testified that she and Desigan were removing Devirani's belongings from the suite when Desigan and Devirani began fighting. Devirani called the police. No charges were laid, but Desigan was warned by the police.
- [223] According to Mr. Naidoo's evidence, Desigan and Ms. Naidoo forced Devirani, who had nowhere else to live, to leave the Agassiz Property. Mr. Naidoo appears to have sided with Devirani, but he did not leave with her and remained in the Agassiz Property.
- [224] It was clear from Ms. Naidoo's evidence that she sided with Desigan and insisted that Devirani or Mr. Naidoo take steps to clear Desigan's name with the police.
- [225] In the written script of her evidence, Ms. Naidoo says that Devirani and Mr. Naidoo "are working together" to gain ownership of the Agassiz Property and that the reason Devirani was so angry with Desigan is that he came back to "put a stop to her plans of taking guardianship of me and [Mr. Naidoo] as she was in drastic financial jeopardy". As to Devirani's financial jeopardy, Ms. Naidoo relies on the fact that Devirani declared bankruptcy in 2015 and that she had obtained a credit card in Ms. Naidoo's name and defrauded her. Ms. Naidoo reported Devirani to the police, and a subsequent fraud charge was laid. According to Ms. Naidoo, and a record in evidence, Devirani pled guilty to the charge.
- [226] There was no evidence that Devirani was planning to take guardianship of her parents.
- [227] Ms. Naidoo goes on, in the written script of her evidence, to say that Mr. Naidoo is responsible for putting their children in harm's way in this divorce and accuses him of colluding with Devirani to steal Ms. Naidoo's original house papers, private documents, and citizenship card to "launch this divorce". There was no evidence to support Ms. Naidoo's concern about collusion or theft.

- [228] Some days after Devirani's and Desigan's altercation, on October 23, 2018, there was a physical altercation between Mr. Naidoo and Desigan.
- [229] The parties gave different descriptions of what led to the altercation and what occurred during it. Both agree that Mr. Naidoo and Desigan had an altercation. Mr. Naidoo testified that he was defending himself against an attack by Desigan.
- [230] Ms. Naidoo portrayed Mr. Naidoo as the aggressor. She said he became agitated because she called the RCMP after Mr. Naidoo had gone out driving alone. Ms. Naidoo asked the RCMP for a wellness check. The RCMP attended and spoke to Mr. Naidoo about his safety.
- [231] I need not determine the reason for the altercation. I accept, based on the photographs put in evidence by Ms. Naidoo that, during the altercation, furniture and ornaments in the Agassiz Property were damaged and broken. Ms. Naidoo testified that Mr. Naidoo caused the damage. Ms. Naidoo's evidence that Mr. Naidoo destroyed most of the living room was exaggerated and not confirmed by the photographs.
- [232] Mr. Naidoo testified that furniture tipped over when he grabbed onto it while being attacked by Desigan. None of the photographs were put to Mr. Naidoo during his cross-examination, and he did not have an opportunity to explain them or provide his version of what they depicted.
- [233] The police arrived after the altercation and suggested that Mr. Naidoo leave. Devirani arrived at about the same time as the RCMP, and she told them she would take Mr. Naidoo somewhere. No charges were laid.
- [234] I find it improbable that a man in his mid-70s, who had recently undergone significant heart surgery, and about whom Ms. Naidoo said she was so concerned that she contacted the RCMP for a wellness check, would start an altercation with his much younger and bigger son. I find that tensions were high in the household after Desigan's and Ms. Naidoo's insistence that Devirani leave the house. Both men were angry, and things got out of hand. Both of them were involved in causing the damage to the furniture and breaking ornaments.
- [235] The following day, Mr. Naidoo and Devirani returned to the Agassiz Property and entered the house. Mr. Naidoo said he returned for some clothing and his medication. Ms. Naidoo says that Desigan "screamed" to her that Mr. Naidoo was back and closed himself in his section of the house. Ms. Naidoo says that Mr. Naidoo and Devirani targeted certain cupboards in the house and Mr. Naidoo removed valuables that he had hidden such as gold coins in jackets, money, and some wallets in a sock drawer. Ms. Naidoo did not say how she knew what Mr. Naidoo was doing.
- [236] Mr. Naidoo also took the Kia which Ms. Naidoo said was "new". As discussed below, the Kia was bought, slightly used in 2016. It was not a new vehicle, although I accept that it was the newer of the two vehicles then owned by the Naidoos. The Kia is a family asset.

[237] The parties never resided with each other after that.

Mr. Naidoo's Claim for Occupation Rent

Rent Paid by Mr. Naidoo Since Separation

[238] Immediately following the separation, and for about four or five months thereafter, Mr. Naidoo lived with a man named Hans and paid him \$500 a month. Using the mid-point of the fourth month as the end date, I find that he paid Hans \$2,250 over four and a half months.

[239] On September 28, 2018, Mr. Naidoo moved into the Rainbow Motor Inn, where he lived until May 31, 2021. Mr. Naidoo testified that he could not find an apartment. He described himself as "misplaced and disoriented" and said he had no furniture. The Rainbow Motor Inn was the best he could do on short notice. He paid \$1,500 a month plus tax. He provided a receipt indicating that he paid a total of \$30,082.50 during his stay.

[240] Ms. Naidoo testified that Mr. Naidoo stayed at the Rainbow Motor Inn because he was addicted to Viagra and was using the motel to meet with other women. There was no independent evidence to support this. At another point in her evidence, Ms. Naidoo suggested that the receipt from the motel was suspicious because Mr. Naidoo was friends with the owner. She suggested that it was possible that he was being charged a lower rate but given a receipt for a higher rate. Ms. Naidoo did not cross-examine Mr. Naidoo in this respect. I find that Ms. Naidoo has not established that there is a reason to question the Rainbow Motor Inn receipt.

[241] Since leaving the motel at the end of May 2021, Mr. Naidoo has been living at Menno Place, a Christian centre in Abbotsford, BC, providing independent and assisted living accommodation.

[242] While Mr. Naidoo was living at the Rainbow Motor Inn, Devirani, who was working with seniors in Abbotsford, put Mr. Naidoo on the waiting list for Menno Place. It took about six to eight months before he got an independent living unit with a bedroom, living room, kitchen, and bathroom. Mr. Naidoo is on a plan that provides him with lunch, but he makes his own breakfast and dinner.

[243] Mr. Naidoo introduced records from Menno Place to establish the rent he pays there. Ms. Naidoo did not question him about them.

[244] From June 1, 2021, Mr. Naidoo paid \$1,700 per month in rent. His rent increased to \$1,725.50 on June 1, 2022, and to \$1,759.95 on July 1, 2023. I did not hear evidence about the rent for 2024. However, I conclude, on a balance of probabilities, that Menno Place's expenses would have gone up in 2024 and that there would have been a resulting rent increase. Doing the best I can with the evidence, the rent increase between 2021 and 2022 was 1.5% and from 2022 to 2023 was 2.0%, averaging those percentage increases at 1.75%, I conclude that on a balance of probabilities Mr. Naidoo's rent would have increased by

1.75% on June 1, 2024 to \$1790.15.

- [245] To the end of trial, I calculate that Mr. Naidoo has paid \$74,245 rent at Menno Place. A deduction from this amount must be made for the fact that Mr. Naidoo's rent includes lunch. Using a figure of \$10 a day for lunch, until the last day of trial, Mr. Naidoo's claim for occupation rent as it relates to Menno Place should be reduced by \$13,020 to \$61,225 rounded to the nearest dollar.
- [246] I find that, in total, Mr. Naidoo has paid \$95,575, rounded to the nearest dollar, in rent at three different locations from the date of separation to the end of trial.
- [247] Mr. Naidoo makes a claim for occupation rent.

Analysis

Proper Law of the Relationship for the Purposes of Property Division under the FLA

- [248] On February 10, 2022, Ms. Naidoo applied for an order determining that Mr. Naidoo had not been habitually resident in British Columbia for the required year before filing his notice of family claim. She sought a determination that this Court had no jurisdiction over the parties' dispute or, in the alternative, if this Court had jurisdiction, it should not exercise it, or in the further alternative, it should apply the law of South Africa in its exercise of jurisdiction.
- [249] On July 11, 2022, Justice Funt heard Ms. Naidoo's application and dismissed it. On the record before him, it was clear that either or both of the parties were habitually resident in British Columbia in February 2019.
- [250] At this trial, Ms. Naidoo argued that the rights of the parties should be determined under South African law. However, as explained in these reasons, there was no admissible expert evidence about South African law.
- [251] Division 6 of Part 5 of the FLA contains provisions with respect to jurisdiction and choice of law rules. That the parties' first common habitual residence was South Africa is not in dispute. However, there is no evidence that a "regime of community of property" would apply in South Africa as required by s. 108(5) of the FLA. In fact, the parties gave evidence about how two separate regimes governing property can apply in South Africa. However, without admissible expert evidence, I cannot conclude that a regime of community of property applies in South Africa. As a result, the parties' substantive rights must be determined according to the proper law of the relationship: FLA, s. 108(6).
- [252] Section 107 of the FLA sets out the rules for determining the proper law of the relationship:

Proper law of relationship

107 The proper law of the relationship between the spouses for the purposes of section 108 [choice of law rules] is

- (a) the internal law of the jurisdiction in which the spouses had their most recent common habitual residence,
- (b) if the jurisdiction under paragraph (a) is outside Canada and is not the jurisdiction most closely associated with the relationship between the spouses, the internal law of the jurisdiction that is most closely associated with the relationship between the spouses, or
- (c) if the spouses did not have a common habitual residence, the internal law of the jurisdiction in which the spouse making an application for an order under this Part was most recently habitually resident.

[253] The only applicable section on the facts of this case is s. 107(a). As explained in *Jiang v. Shi*, 2017 BCCA 276 at para. 54, the "most recent common habitual residence" is the place the spouses most recently lived together in a marriage-like relationship and participated together in everyday family life. Put differently, it is the place in which the spouses most recently made their home together.

[254] On the clear evidence in this case, the proper law of the relationship is British Columbia law. When the parties emigrated to Canada in 1993, they intended to permanently relocate here. While both parties regularly returned to South Africa for extended periods, particularly in the early years after they came to Canada, they always returned to Canada. Both parties are Canadian citizens and file income tax returns in Canada. For at least the last four years before their separation, the parties resided together in the Agassiz Property.

Credibility/Reliability Assessment

[255] Credibility and reliability are significant issues in this case.

[256] In *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd, [2012] S.C.C.A. No. 392, Justice Dillon explained that "[c]redibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides". She noted that the assessment of credibility first involves assessing a witness' evidence on a stand-alone basis by examining various factors, including:

- a) the witness' ability and opportunity to observe events;
- b) the witness' firmness of memory;
- c) the witness' ability to resist the influence to modify their recollection;
- d) whether the witness' evidence harmonizes with independent evidence that has been accepted;
- e) whether the witness changed their testimony during direct and cross-examination;
- f) whether the witness's testimony seems unreasonable, impossible, or unlikely;

- g) whether the witness had a motive to lie; and
- h) the witness' general demeanor.

[257] In the final analysis, if a trier of fact accepts a witness' evidence as being generally credible, they should then compare that evidence with the other evidence to determine whether it is "consistent with the probabilities affecting the case as a whole and shown to be in existence at the time": *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 356, 1951 CanLII 252 (B.C.C.A.).

[258] Credibility assessments are more an "art than science" and are "particularly daunting where a judge must assess the credibility of two witnesses whose testimony is diametrically opposed": *R. v. S.* (R.D.), [1997] 3 S.C.R. 484 at para. 128, 1997 CanLII 324. While it is useful for a judge to attempt to articulate the reasons for believing or disbelieving a witness, it may be difficult to do so: *R. v. R.E.M.*, 2008 SCC 51 at para. 49. This is because credibility assessments involve a "complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events": *R. v. Mohsenipour*, 2023 BCCA 6 at para. 210.

[259] In making credibility assessments, I am permitted to use common sense and the wisdom gained from observing the witnesses throughout the proceeding, provided that my assessment is not grounded in generalizations, issues not in evidence, emotional evaluations, stereotypes, guesswork, or other impermissible forms of reasoning: *S.* (R.D.) at para. 129; *R.C.T. v. A.K.T.*, 2023 BCSC 654 at para. 11.

[260] There is a distinction between the credibility of a witness' evidence and its reliability. Reliability concerns the accuracy of a witness' evidence. The distinction was discussed by Justice Doherty in *R. v. Morrissey* (1995), 22 O.R. (3d) 514 at 526, 1995 CanLII 3498 (C.A.), recently cited by Justice Murray in *S.B.F. v. D.G.F.*, 2022 BCSC 2231 at paras. 28-29. Justice Doherty distinguished veracity (credibility) and accuracy (reliability), saying that an incredible witness cannot give reliable evidence, but a credible (honest) witness may still be unreliable.

[261] In *Faryna* at 356-357, Justice O'Halloran described the trial judge's task of making findings of credibility as follows:

If a trial Judge's finding of credibility is to depend solely on which person he thinks made the better appearance of sincerity in the witness box, we are left with a purely arbitrary finding and justice would then depend upon the best actors in the witness box [T]he appearance of telling the truth is but one of the elements that enter into the credibility of the evidence of a witness. Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as well as other factors, combine to produce what is called credibility, and cf. *Raymond v. Bosanquet* (1919), 50 D.L.R. 560 at p. 566, 59 S.C.R. 452 at p. 460, 17 O.W.N. 295. A witness by his manner may create a very unfavourable impression of his truthfulness upon the trial Judge, and yet the surrounding circumstances in the case may point decisively to the conclusion that he is actually telling the truth .

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a Court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skilful exaggeration with partial suppression of the truth. Again a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken. ...

The trial Judge ought to go further and say that evidence of the witness he believes is in accordance with the preponderance of probabilities in the case and, if his view is to command confidence, also state his reasons for that conclusion.

[Emphasis added.]

[262] Overall, I find Mr. Naidoo to be a credible witness. He did not testify from a prepared script. He tried his best to recall matters that occurred long in the past and appeared genuinely saddened by the situation he found himself in at this stage of his life.

[263] Mr. Naidoo acknowledged that Ms. Naidoo was a good mother and worked and contributed to the family. He described her as quite capable and intelligent. He acknowledged that she was involved in the education of his children because he was not an educated man. His evidence did not change between direct and cross-examination.

[264] Although I find him to be credible, Mr. Naidoo's evidence was not always reliable. He was unsure of the dates on which certain things happened and his estimate of the value of the jewellery gifted to Ms. Naidoo was inconsistent with his other evidence about what he spent annually on jewellery. His criticism of Desigan affected the reliability of his evidence about Desigan's role in the family.

[265] Ms. Naidoo was not a credible witness. It was concerning that she testified by reading from a written script of evidence that had been prepared with Desigan's assistance and included notations for where she should emphasize certain points. The script reminded her from time to time to introduce documents into the record. Evidence from a written script is less credible, particularly when prepared with the assistance of someone other than the witness.

[266] The written script included argument and wove a narrative that was inconsistent with the positions Ms. Naidoo had taken earlier in these proceedings and, in fact, with the affidavits that she had sworn earlier.

[267] In particular, in her script as read into the record, Ms. Naidoo said that she provided proof that she paid for the Coquitlam Property. There was no such proof. Although there were sufficient funds in 1993 in her RBC account to pay the amount required on closing, she did not provide evidence of the source of those funds, nor did she produce records about the balance in 1995 when the transaction for the Coquitlam Property closed. She did not produce her historical banking records or other records from South Africa from which the funds in the RBC account could be traced. She did not comply with the Taylor Order. As she said in her written evidence, she did not agree with many of its terms. As she did not appeal the Taylor Order, it remained binding on her regardless of whether she agreed with it, and it was not open to her to choose not to comply with it.

[268] The records produced from Ms. Naidoo's RBC Money Market Account did not show a withdrawal of cash of over \$110,000 in May 1996, when the purchase of the Coquitlam Property closed.

[269] There were also contradictions between Ms. Naidoo's evidence and what she had earlier sworn to in these proceedings. Most glaringly, in the written script of her evidence, she said repeatedly that she paid for the Coquitlam Property using her money.

[270] Despite that evidence, in an affidavit sworn by Ms. Naidoo on October 13, 2020, in support of her application for an interim property restraining orders under ss. 89 and 91 of the FLA, she swore:

9. In or around 1995 the Claimant and I purchased a property located at 1121 Brunette Avenue, Coquitlam (the "Coquitlam Property") to satisfy our immigration requirements. We sold the Coquitlam Property in June 2014 on the insistence of the Claimant. The Claimant insisted on keeping all the proceeds for himself. I disagreed because we both had contributed to the Coquitlam Property. We later reached an agreement to split the net sale proceeds equally. With my half of the net sale proceeds, I purchased a property located at 6897 Fraser Drive, Agassiz, B.C. (the "Agassiz Property")

[271] As Justice Taylor wrote in his November 29, 2021 reasons (regarding Ms. Naidoo's later application to have a certificate of pending litigation filed by Mr. Naidoo against title to the Agassiz Property removed), her application for a s. 91 order was:

completely inconsistent with her argument that there was no community property and that the Agassiz Property is therefore not family property. Ms. Naidoo cannot have it both ways. Having ignored the Antenuptial Agreement and secured a freezing order to her benefit in 2020, and having accepted in her prior application that the property regime under the FLA was indeed applicable (which includes the provisions relating to property and family property under ss. 81 to 84), she cannot now reverse her position and reject the FLA regime when it suits her interests.

[272] When Ms. Naidoo was asked about this at trial, she said she was represented by a legal aid lawyer and that she did not understand that the restraining order would be applicable to the Agassiz Property. She thought it would only apply to the cash that Mr. Naidoo had. That evidence did not assist her credibility. If, as Ms. Naidoo alleged, the parties had truly separated their property, trying to restrain Mr. Naidoo's use of his cash was inconsistent with her position that they lived under a separate property regime.

[273] Further, in a "without prejudice" letter Ms. Naidoo sent to Mr. Naidoo's then counsel, and exhibited to her October 21, 2020 affidavit-thereby waiving privilege in it-she wrote:

My Coquitlam Property was bought for and paid for by myself and Mr. Naidoo to satisfy conditions for our immigration, we had to register it as a business and our lawyer said we had to have board members because the business loan had to reflect the members. We put our two eldest children as token board members. At this Time period myself and Mr. Naidoo were working and sending money to our kids when we could. My daughter Angeni was unemployed for a number of years until I purchased a ticket Master [sic] for her to run. Her contribution to the property was negligible and she did not contribute to the mortgage. My daughter Primmithi ... and my son Desigan were covering accounts with assistance from myself and Mr. Naidoo.

[Emphasis added.]

[274] It is notable that her affidavit is inconsistent with her evidence that Mr. Naidoo did not contribute to the costs of renovating the Coquitlam Property.

[275] In an affidavit sworn by Ms. Naidoo on August 17, 2021, in support of her application to remove the CPL and Land (Spouse Protection) Act charge filed by Mr. Naidoo against title to the Agassiz Property, she changed her evidence slightly. She swore:

8. Around 1995 The Claimant and I purchased a property together located at 1121 Brunette Avenue, Coquitlam (the "Coquitlam Property") to satisfy our immigration requirements. We sold the Coquitlam Property in June 2014 on the insistence of the Claimant. The Claimant insisted on keeping all the proceeds for himself. I disagreed because we both had contributed to the Coquitlam Property. We later reached an agreement to split the net sale proceeds equally and in affect [sic] separate our assets. With my half of the net sale proceeds, I shared the proceeds with my son. I purchased a property located at 6897 Fraser Drive, Agassiz, BC (the "Agassiz Property"). I purchased the Agassiz Property with an equal contribution from our son, Desigan. It was agreed between myself and Desigan, that the Agassiz Property would be in my sole name as I would qualify for the Seniors Grant while he worked in South Africa .

[276] There was no evidence that Desigan received a portion of Ms. Naidoo's "share" of the proceeds. Justice Taylor dismissed Ms. Naidoo's applications on November 29, 2021.

- [277] Ms. Naidoo swore a further affidavit on February 10, 2022, in support of her jurisdiction argument, which also sought to have the charges on title to the Agassiz Property removed, despite Justice Taylor's dismissal of her prior application on that issue. In this affidavit, she again changed her evidence and alleged that Mr. Naidoo was unfaithful and abusive:
8. Around 1995 The Claimant and I purchased a property together located at 1121 Brunette Avenue, Coquitlam (the "Coquitlam Property") solely to satisfy our immigration requirements. On the insistence of the Claimant we put the home up for sale. We sold the Coquitlam Property in June 2014 Even [sic] though I paid for the majority of the Coquitlam home, the Claimant wanted to keep all the proceeds from the sale himself. I disagreed on this because of my anti-nuptial contract and the fact that the Claimant was having affairs and sex trips to India. The Claimant was always emotional [sic] and verbally abusive to me and my children. He was physically abusive to my son Desigan growing up and later on physically abusive to me. He also further disliked our son because my son informed me of some of the women the claimant was engaging with were contacting my son for money that they claimed the Claimant owed them. Justice Funt dismissed Ms. Naidoo's applications.
- [278] Despite the change in her last affidavit, Ms. Naidoo acknowledged in all three that she and Mr. Naidoo had purchased the Coquitlam Property jointly. She never said that she, alone, purchased the Coquitlam Property.
- [279] Ms. Naidoo was not cross-examined in detail on the contradictions between these affidavits, correspondence, and her written statement of evidence. As a self-represented litigant, Mr. Naidoo was not capable of that type of probing cross-examination. Nonetheless, it is apparent that repeatedly, in sworn evidence filed in court, on which she intended members of this Court to rely on in making orders in her favour, Ms. Naidoo has taken a contrary position to the one she took at trial about the source of funds for the purchase and renovations of the Coquitlam Property.
- [280] In any event, title to the Coquitlam Property was not registered in her name, and there is no dispute that on its sale, the parties used some of the proceeds to purchase the Agassiz Property registered in Ms. Naidoo's name, and Mr. Naidoo kept the balance in cash. The division of the proceeds was inconsistent with Ms. Naidoo's evidence that, after entering into the ANC, the parties always kept their property separate under its terms. The fact that the parties held a joint bank account in Canada was also inconsistent with the ANC terms.
- [281] In her trial evidence, Ms. Naidoo also exaggerated her level of education and work experience. She took every opportunity to denigrate Mr. Naidoo, repeatedly calling him corrupt and a liar. She was also critical of her daughters, Devirani and Angeni.
- [282] Ms. Naidoo's description of Mr. Naidoo as lazy and seeking short-cuts in business, rarely signing contracts or keeping proper records, and subcontracting work out while he stayed at home, was inconsistent with her acknowledgement that Mr. Naidoo was in demand as a contractor and that Des-Neil Construction was a household name in Lenasia.

- [283] Ms. Naidoo persisted in her position that she and Mr. Naidoo were habitual residents in South Africa, despite Justice Funt ruling against her on that issue. She also persisted in her position that Mr. Naidoo had accepted her final settlement offer, despite Justice Taylor ruling against her on that issue. Ms. Naidoo further persisted in her position that Mr. Naidoo was represented at trial, while she was not and, that as a result, the proceedings were unfair to her.
- [284] As a result of her persistence in these issues, Ms. Naidoo's evidence was often argumentative, and she saw unfairness whenever things did not go her way.
- [285] It has been particularly challenging to make findings of fact in this case because of my significant concerns about Ms. Naidoo's credibility. As a result, I approach Ms. Naidoo's evidence with caution and rely on it only where documentary evidence supports her version of events. Because of the evidentiary difficulties in this case, I must pay particular attention to what facts are most probable because it is impossible to be confident in the credibility of Ms. Naidoo's evidence.
- [286] In making my credibility findings, I have also relied on my observations of the parties, the dynamic between them, and to an extent, the dynamic between them and Desigan, over this 23-day trial. I have also relied on the evidentiary record, common sense, and my assessment of the probabilities affecting the case as a whole. I conclude that, where their evidence differed, I prefer Mr. Naidoo's despite my concerns about its reliability.
- [287] Justice Southin's comments in *Le v. Milburn*, 1987 CarswellBC 2936 [1987] B.C.J. No. 2690 (S.C.) are particularly apt in the circumstances:
- [1] When a litigant practises to deceive, whether by deliberate falsehood or gross exaggeration, the court has much difficulty in disentangling the truth from the web of deceit and exaggeration. If, in the course of the disentangling of the web, the court casts aside as untrue something that was indeed true, the litigant has only himself or herself to blame. ...

Applicable Law - Occupation Rent

- [288] At common law, a co-tenant is entitled to claim occupation rent only when they have been ousted from a property. However, if the tenant in possession seeks to recover property expenses from the departed tenant, the court retains discretion to set off occupation rent against the expense claim. There is no absolute right to such a claim or set off because occupation rent is an equitable remedy: *Hodel v. Adams*, 2016 BCSC 910 at para. 20.
- [289] In *Shen v. Tong*, 2013 BCCA 519, in her concurring reasons at para. 94, Justice Smith noted that several authorities have indicated that ouster is not required in the family law context. In *Ross v. Ross*, 2013 BCSC 1716 at paras. 47-49, Justice Verhoeven observed that in other provinces, the law does not focus on ouster or claims for expenses by the spouse remaining in possession. He also remarked that occupation rent concepts derived from general property law may be inconsistent with modern family law.

- [290] In *McFarlen v. McFarlen*, 2017 BCSC 1737 at paras. 12-22, Justice Jenkins carefully reviewed a number of cases, including *Shen and Ross*, and concluded that ouster is not a precondition to a claim for occupation rent, as measured by the cost of alternative accommodation:
- [20] So, is "ouster" a condition precedent to a claim for occupational rent? The authorities suggest that this remains an open question. Based on my interpretation of the law in this province, I accept that "ouster" is no longer a pre-condition to a claim for occupational rent measured by the cost of alternative accommodation. The statements by Verhoeven J. which have been adopted by McEwan J. in *Piderman* as well as the statement by Willcock J. in *L.M.R v. J.F.R.*, 187 A.C.W.S. (3d) 775, support this interpretation. My reasoning is reflective of the opinions expressed by Verhoeven J. and McEwan J. in *Ross*, *Piderman* and *C.M.L.S.*- that the proper way to approach a claim for occupational rent is as a discretionary tool to achieve fairness. Such a conclusion is consistent with family law legislation including the *Divorce Act*, (R.S.C., 1985, c. 3 (2nd Supp.)) and the *FLA* which are not premised upon "fault based" principles. If I have correctly interpreted the law in British Columbia, then a review of the claim can proceed on the basis of equity.
- [291] I agree with Justice Jenkins' conclusion.
- [292] Justice Smith's reasons in *Shen* set out a common approach to occupation rent in family cases. She observed that occupation rent or, alternatively, compensation for the expenses of the non-occupying spouse as a measure of their entitlement to occupation rent, is not a stand-alone claim. Instead, it is generally considered in the context of a claim for property reapportionment: at para. 91.
- [293] At para. 94, she identified the objective of occupation rent as doing "what is 'just and equitable' between the parties" within the parameters of what was then s. 65(1) of the *Family Relations Act*, R.S.B.C. 1996, c. 128. She also set out the following non-exhaustive list of factors that may be relevant to assessing a claim for occupation rent:
- a) aside from ouster, the circumstances under which the non-occupying spouse left the home, and if and when the non-occupying spouse moved for a sale of the home;
 - b) whether children are residing with the occupying spouse;
 - c) whether the occupying spouse has made a claim for contribution from the non-occupying spouse for the expenses related to the premises;
 - d) whether support has been paid;
 - e) whether the occupying spouse increased or decreased the value of the property;
 - f) the duration of the occupancy; and
 - g) other competing claims in the litigation that may offset an award of occupation rent.

- [294] Applying the factors that are relevant in this case, after the events of October 23, 2018, and given the protection order and subsequent no contact orders that were in place, it was impossible for the parties (and Desigan) to remain in the Agassiz Property. I think it likely that the parties could have lived together if Desigan had moved out. However, Ms. Naidoo sided with Desigan in respect of the altercation, and there was no suggestion that he would move out. Mr. Naidoo was required to find and pay for alternate accommodation pending the outcome of this litigation.
- [295] Mr. Naidoo commenced these proceedings seeking an equal division of all family property. He has maintained that position throughout. The progress of this litigation has been slow, but, on the record, both parties share some blame for the delay. Applications and the trial were scheduled and adjourned a number of times as presiders concluded that neither party was ready for trial. That has delayed a final determination of the parties' issues and has increased the claim for occupation rent.
- [296] Ms. Naidoo does not seriously challenge the amount Mr. Naidoo paid for alternative accommodation. It far exceeds what Ms. Naidoo was required to pay in property taxes and insurance to preserve the Agassiz Property following the separation where she and Desigan continued to reside, mortgage-free.
- [297] For the reasons set out below, I have dismissed Ms. Naidoo's claim for spousal support. Although I do not find that Ms. Naidoo had entitlement to spousal support, the parties' most recent financial statements show that there is little difference in their incomes. As a result, there are no other claims that would offset an award of occupation rent.
- [298] As I have said, I have no appraisal evidence about the increase in value of the Agassiz Property between the date of separation and the date of trial, the latter of which is the presumptive date for division of property. The property tax assessments between 2014 (when the Agassiz Property was purchased) and 2018 (the date of separation) suggest that the property significantly increased in value between 2014 and 2018. There is no evidence to suggest that the increase was as a result of any improvements the parties made to property. In fact, Ms. Naidoo's evidence was that the Agassiz Property required no renovations. As a result, I find that any increase in its value is due to market forces.
- [299] By trial, Mr. Naidoo had paid occupation rent for over 72 months. I find that Mr. Naidoo is entitled to an adjustment for half of the \$95,575 he has paid in occupation rent.
- [300] For the purpose of illustration, equally dividing the value of the Agassiz Property, assuming a value of \$850,000, would provide each with \$425,000. Comparing this amount to the occupation rent claimed by Mr. Naidoo, and based on my consideration of the relevant factors, I am satisfied that an equal division of the value of the Agassiz Property--which would not account for the occupation rent paid by Mr. Naidoo--would result in a significant unfairness to him pursuant to s. 95(2)(i) of the FLA.

- [301] Again, using the assumed value of \$850,000, Ms. Naidoo would receive \$377,212.50 and Mr. Naidoo would receive \$472,787.50 reflecting half of the occupation rent he paid. These numbers are for illustration purposes only as the actual value of the Agassiz Property may be higher or lower than \$850,000. The illustration does not take into account that Ms. Naidoo is also entitled to a 50% contribution from Mr. Naidoo for the expenses she is able to prove that she paid for maintenance of the Agassiz Property, including property taxes and insurance.
- [302] In her September 28, 2023 Financial Statement, Ms. Naidoo says that between 2019 and 2023, she paid \$6,000 in insurance and \$10,066.27 in property taxes for the Agassiz Property. She has produced some records in that regard, but was not cross-examined about them. I have no evidence of what she paid up to September 20, 2024, the last day of trial. Mr. Naidoo is responsible for half of those expenses up to September 20, 2024.
- [303] Ms. Naidoo also produced bills for utilities for the Agassiz Property. Utility costs are usage costs and, as Ms. Naidoo had the use of the property together with Desigan and his wife, these are not costs that are properly set off as against occupation rent.
- [304] To the extent that Ms. Naidoo can prove other expenses that she incurred to maintain or improve the Agassiz Property, between the date of separation and September 20, 2024, she is entitled to an equal contribution to those expenses from Mr. Naidoo.
- [305] I order that within 30 days of the release of these reasons, Ms. Naidoo is to provide Mr. Naidoo with proof of the property taxes and insurance she paid for the Agassiz Property between October 23, 2018 (the date of separation) and September 20, 2024, together with any other maintenance and improvement expenses she is claiming. The parties should attempt to reach agreement on Mr. Naidoo's 50% share of those expenses. If the parties are unable to agree, they are to appear before a Registrar of the Court for an assessment and certification of the appropriate expenses.

Ms. Naidoo's Spousal Support Claim

- [306] In her counterclaim, Ms. Naidoo seeks spousal support. She does not specifically seek retroactive spousal support. She does not specify in her counterclaim whether she is seeking spousal support under the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [DA] or the FLA. She checked both boxes. As the parties are married, I will consider her application under the DA.

Applicable Law

- [307] Section 15.2(4) of the DA requires that the amount and duration of spousal support be determined on consideration of the conditions, means, needs and other circumstances of each spouse, including the following:
- (a) the length of time the spouses cohabited;

- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of either spouse.

[308] The objectives of an order for spousal support are set out in s. 15.2(6) of the DA:

Objectives of spousal support order

- (6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should
 - (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
 - (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
 - (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
 - (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[309] There are three bases for entitlement to spousal support: contractual, compensatory, and non-compensatory: *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 at para. 37, 1999 CanLII 715. There is no contractual claim in this case.

Basis for Ms. Naidoo's Spousal Support Claims

[310] As set out in her counterclaim filed June 21, 2019, Ms. Naidoo says this about spousal support in Part 2 of Schedule 3:

I gave up my career when we had our 4 children. I stayed at home raising our children and assisting my husband with his career with no salary or compensation. I nursed him back from a 5 [sic] bypass surgery and also suffered with 2nd hand smoking from years of my husband smoking. I have always done all the housework and cleaning in my home. I am 70 years old with diabetes and osteoarthritis and have sacrificed everything for my husband and his career, children and my marriage. My husband is a high networth [sic] individual while I struggle to make ends meet with this divorce. He has also removed the only single family vehicle from the home which has left me without transport. My husband has money to get very good lawyers, while I cannot afford to. I humbly request spousal support for all my years of marriage to allow me to get myself back on my feet and move on with my life.

[311] As I interpret her pleading, Ms. Naidoo appears to say that she is entitled to spousal support on both a compensatory and non-compensatory basis and that it should be retroactive to the date she "gave up her career".

- [312] I note that Ms. Naidoo's position with respect to spousal support is inconsistent with the position she took at trial that she was a businesswoman in her own right, who invested in property and was the only source of the funds the family brought to Canada, and that she was the sole owner of the Pageview Property and its rental income.
- [313] There is no basis for a retroactive claim. Any obligation to pay spousal support is triggered on the date the parties separated.

Compensatory Claim

- [314] Ms. Naidoo's compensatory support claim appears to be based on her contribution to Mr. Naidoo's business, as well as her role in raising the parties' four children and maintaining their homes.
- [315] In determining whether a spouse is entitled to compensatory support, the court must consider whether the spouse has suffered economic disadvantage as a result of the marriage or its breakdown: *Moge v. Moge*, [1992] 3 S.C.R. 813 at 861, 865, 1992 CanLII 25.
- [316] Compensatory support is intended to redress the economic disadvantages and advantages arising from the marriage or its breakdown. It recognizes the sacrifices made by the recipient spouse in assuming primary childcare and household responsibilities, often resulting in a lower earning potential and fewer prospects for financial success: *Moge* at 860-862; *Bracklow* at para. 39. The first two objectives set out in s. 15.2(6) of the DA primarily relate to compensation: *Bracklow* at para. 41.
- [317] The case authorities establish that no single basis for support or objective under the DA supersedes the other and many claims involve aspects of both compensatory and non-compensatory support: *Chutter v. Chutter*, 2008 BCCA 507 at para. 49, leave to appeal ref'd, [2009] S.C.C.A. No. 41.

Non-Compensatory Claim

- [318] Non-compensatory support is based on a social obligation model of marriage and the concept that, upon marriage dissolution, a former spouse is primarily responsible for meeting the needs of a disadvantaged spouse. Non-compensatory support aims to narrow the gap between the needs and means of the spouses, recognizing that the concept of need goes beyond the basic necessities of life and varies according to the circumstances of the parties.
- [319] Ms. Naidoo's non-compensatory support claim is based on her pleading that, since separation, she is suffering hardship in making ends meet and that Mr. Naidoo is a high net worth individual.
- [320] In *Moge*, Justice L'Heureux-Dubé explained that the doctrine of spousal support, which focuses on the equitable sharing of the consequences of marriage breakdown, does not guarantee that either party will maintain the marital standard of living post-separation.

However, the marital standard of living "is far from irrelevant to support entitlement As marriage should be regarded as a joint endeavour, the longer the relationship endures, the closer the economic union, the greater will be the presumptive claim to equal standards of living upon its dissolution": Moge at 870. That said, spousal support is not to be used as "a general tool of redistribution which is activated by the mere fact of marriage": Moge at 864.

- [321] The burden is on Ms. Naidoo to establish entitlement to spousal support. I find that she has not met this burden. I cannot conclude that Ms. Naidoo is entitled to either compensatory or non-compensatory grounds for the following reasons:
- (a) Although the relationship was a lengthy one, based on her evidence, Ms. Naidoo did not make any material sacrifices to advance Mr. Naidoo's career. I accept that she assisted him in his business endeavours, but she clearly benefited from the income that was generated while he was a contractor. The parties lived a good life in South Africa and over time raised themselves out of the poverty they were born into. Both contributed to that life.
 - (b) The parties have not accumulated many assets. In dispute are the Agassiz and Pageview Properties, chattels in each property, jewellery, gold coins, vehicles, and cash.
 - (c) Neither party has worked in Canada. They are elderly. Their sources of income are old age security and government supplements.
 - (d) According to Mr. Naidoo's most recent Financial Statement, sworn July 3, 2023, and the attached income tax returns for 2019, 2020 and 2021, his line 15000 income in each of those years, respectively, was \$20,940.13, \$12,587.02, and \$20,940.13. His estimated 2023 income was \$16,848.68, including a one-time non-recurring payment of \$372.68. He is not a high earner. Although Ms. Naidoo suggests that Mr. Naidoo has hidden assets in India, the only support for that suggestion was hearsay, and Mr. Naidoo denied it. No such assets were proven.
 - (e) According to Ms. Naidoo's most recent Financial Statement, sworn September 28, 2023, and the attached income tax returns for 2020, 2021 and 2022, her line 15000 income in each of those years, respectively, was \$25,972, \$18,201 and \$19,007.52. She estimated that her 2023 income would mirror what she earned in 2022.
 - (f) Based on these incomes, no spousal support is payable by either party under the Spousal Support Advisory Guidelines.
 - (g) Since separation, Mr. Naidoo has been accessing his savings to pay for his accommodation. By contrast, Ms. Naidoo continues to live in the home they jointly lived in prior to separation with her son and his son's wife, both of whom I understand to be working and, presumably, contributing something to the costs of running the Agassiz Property.
 - (h) Ms. Naidoo gave little evidence of needs-based entitlement.

[322] However, in the circumstances of this case, it is not necessary for me to reach a conclusion about Ms. Naidoo's entitlement to spousal support because, regardless of entitlement, the parties' incomes are similar. As a result, no spousal support is payable.

Family Property

[323] Subject to excluded property claims, s. 81 of the FLA presumes that each spouse is entitled to a one-half interest in family property, which is defined to include all real and personal property owned by at least one spouse on the date of separation, except excluded property. However, the court may make an order for unequal division if equal division would be "significantly unfair": *Hopson v. Hannon*, 2020 BCSC 794 at paras. 145-146, *aff'd* 2022 BCCA 314. There are no excluded property claims in this case.

[324] The real property in dispute is the Agassiz Property and the Pageview Property. The parties also own other personal property, namely some jewellery (the amount of which is in dispute); gold coins (that have already been divided equally between them); a 2016 Kia in British Columbia; a 2005 BMW in South Africa; cash in various bank accounts; and movables, consisting of household furnishings and possessions in both the Pageview Property and the Agassiz Property.

[325] The parties disagree about the value of the property. There is also a significant issue regarding Ms. Naidoo's transfer of the Pageview Property after separation.

[326] Ms. Naidoo's pleadings seek an unequal division of property although, at trial, she argued strenuously that the parties' property division should be governed by South African law. She relied heavily on *Schlotfeldt v. Schlotfeldt*, 2009 BCSC 729, supplementary reasons 2009 BCSC 1452, *aff'd* 2011 BCCA 82.

[327] As I have explained, there was no admissible evidence about the application of South African law to the parties' circumstances. In any event, as I have also explained, the parties did not abide by the terms of their ANC either while they lived in South Africa or after they emigrated to Canada. Instead, they were engaged in what I have determined to be a joint family business enterprise. Further, Ms. Naidoo's sharing of the proceeds of the Coquitlam Property, which she testified she had fully paid for, belies her reliance on the ANC.

[328] In *Schlotfeldt*, unlike here, the parties agreed that family assets were to be divided under their ANC and under South African law. In this case, I have determined that the proper law of this relationship is the FLA for the reasons I have set out.

[329] Under s. 95(1) of the FLA, the court may order an unequal division of family property if an equal division would be "significantly unfair", having regard to the facts set out in s. 95(2). They are as follows:

(2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:

- (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.
- (3) The Supreme Court may consider also the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met.

[330] As explained in *Parton v. Parton*, 2018 BCCA 273 at para. 35, the list of factors in s. 95(2) is non-exhaustive. The Court also described the test for significant unfairness under s. 95 as "more stringent" than the predecessor "unfairness" test, as it requires "something objectively unjust, unreasonable or unfair in some important or substantial sense": at para. 36.

[331] Presumptively, the date for determining the value of family property and family debt is the date of the hearing: FLA, s. 87(b)(ii). In order to depart from this presumptive valuation date, the court must make a finding of significant unfairness under s. 95: *Kumagai v. Campbell Estate*, 2018 BCCA 24 at para. 76. In other words, in order to value the property or debt on a date other than the hearing, the court must be satisfied that significant unfairness would arise if the hearing date was used: *Kumagai* at para. 76. Where one spouse has, after

separation, caused a significant increase or decrease in the value of family property beyond market trends, that may be a sign of significant unfairness: *Zilic v. Zilic*, 2021 BCCA 107 at para. 13(h); FLA, s. 95(2)(f).

[332] Bank accounts that are used for ordinary living expenses after separation are typically valued as of the date of separation, rather than the date of hearing, to account for money that is routinely moved in and out of such accounts. In this case, the consent mutual property restraining order granted by Justice Crossin on November 16, 2020, allowed for the use of the parties' bank accounts for everyday living, medical, and travel expenses.

[333] With these principles in mind, I consider the various assets in issue here.

Agassiz Property

[334] The major asset in issue is the Agassiz Property. It is registered in Ms. Naidoo's name. As explained earlier in these reasons, the parties used part of the proceeds of the sale of the Coquitlam Property to buy the Agassiz Property. The parties then lived in it as their family home until the date of separation.

[335] Throughout her evidence, Ms. Naidoo repeated her belief that because she is the registered owner of the Agassiz Property, it was not family property to be divided equally. She argues that the Agassiz Property, and any increase in its value, belongs to her and Desigan.

[336] I concluded earlier in these reasons that Ms. Naidoo has not established that Desigan contributed to the purchase of the Agassiz Property. It is property registered in Ms. Naidoo's name, acquired while the parties were married, and owned on the date of separation. Subject to considerations of significant unfairness, or an excluded property claim, the value of the Agassiz Property would be divided equally between the parties. I conclude that there is no significant unfairness in dividing the Agassiz Property equally and that there is no excluded property claim with respect to it. I was not acquired prior to the marriage or through a gift or inheritance during it.

[337] There is no appraisal of the Agassiz Property in the materials. In her trial brief, Ms. Naidoo said that she was obtaining a report from Robert McPherson, a real estate agent with Royal LePage Little Oak Realty who assisted her with the purchase of the Agassiz Property, presumably respecting the value of the Agassiz Property at trial. No such report was filed. In Ms. Naidoo's documents, there is a September 22, 2023 email from Mr. McPherson in which he values the Agassiz Property at between \$850,000 and \$875,000 based on active listings (but not actual sales). The date of the email is close to the start of the trial but not the end of trial. I also note that for property tax purposes, the Agassiz Property was assessed as of July 1, 2024, for the 2025 tax year, as having a value of \$829,000.

[338] In her submissions, Ms. Naidoo acknowledged that the assessed value for tax purposes does not represent true value. She suggested adding 15% to the assessed value. Doing so would result in a value for the Agassiz Property of over \$1.036 million.

- [339] To determine the value of the Agassiz Property, within 30 days of this decision, each of the parties is to obtain and pay for an expert opinion of its value as of September 20, 2024. Once the appraisals have been obtained, the parties are to exchange them and attempt to agree on a value in writing. If they are unable to agree, both opinions are to be provided to Justice MacNaughton who will then determine the appropriate value.

Pageview Property

- [340] On the date of separation, the Pageview Property was registered in Ms. Naidoo's name. However, based on the documentary evidence and the fact that the purchased land was improved by Mr. Naidoo as part of a joint family business venture, I conclude that the registered title did not reflect its actual ownership.
- [341] As set out above, after the parties separated, Ms. Naidoo transferred the Pageview Property to Desigan. She thereby purported to defeat Mr. Naidoo's interest in the Pageview Property. As Desigan is not a party to these proceedings, and there is no argument that the transfer of the Pageview Property was fraudulent, and my lack of jurisdiction over property in South Africa, I have no jurisdiction to unwind the transaction. Nonetheless, I have found that the Pageview Property is family property to be divided equally.
- [342] In Mr. Naidoo's July 3, 2023 Financial Statement, he values the Pageview Property at ZAR 4,500,000. I presume that he arrived at that value from the listing agreement with Re/Max. It appears to have been signed before 2015 and is unlikely to reflect the current value of the Pageview Property. In any event, on the evidence, the Pageview Property did not sell at that listing price.
- [343] In Ms. Naidoo's September 28, 2023 Financial Statement, she values the Pageview Property at ZAR 1,620,000. It is not clear how she arrived at that figure because, according to the registered transfer to Desigan, he paid ZAR 1,493,000 for it. There is also no evidence in Ms. Naidoo's financial records that Desigan, in fact, paid her anything for the Pageview Property.
- [344] Ms. Naidoo has produced some documents setting out property tax values for other properties in Pageview, Johannesburg, but they appear to be for single-family homes, not five-unit apartment buildings. There is no evidence of a correlation, if any, between property tax values and property market values in Pageview.
- [345] In her trial brief, Ms. Naidoo said that she was awaiting a report from the FNB Bank as to the value, presumably of the Pageview Property. No such report was filed.
- [346] In order to determine a fair market value of the Pageview Property, I direct that the parties jointly retain and pay for Re/Max Realty, the former listing agent, to provide the parties and the court with an expert opinion as to a realistic price at which the Pageview Property would have sold on September 20, 2024, the last date of trial. Neither party is to attempt to influence Re/Max Realty in coming to its opinion, and Re/Max is to be provided with a copy

of paras. 340-347 of this decision. The cost of the Re/Max opinion is to be shared. Ms. Naidoo is to pay the cost in the first instance but will be entitled to set off half of the cost as against Mr. Naidoo's share of the division of their family property as set out in para. 397(iv) of this decision.

- [347] If Re/Max is unable to provide the opinion, in the absence of any other reliable trial evidence as to the value of the Pageview Property, and in an effort to bring closure to this dispute, I order that the two values in the parties' F8 Financial Statements are to be averaged and find that, in an admittedly rough justice way, the value of the Pageview Property is ZAR 3,060,000. Based on the Bank of Canada exchange rate on the last day trial, September 20, 2024, that converts to \$237,517. Mr. Naidoo is entitled to his equal share of the value of the Pageview Property in the amount of \$118,759.
- [348] There was no evidence about Ms. Naidoo's or Desigan's efforts to lease the apartment units. During Ms. Naidoo's evidence, she testified that one unit was kept for her use, another was used by Desigan and his wife, and one was rented. There was no evidence about the rental received by Ms. Naidoo or Desigan for the one rented unit. In the absence of evidence, I have concluded that the Pageview Property is not being used to generate the income that it is capable of generating. There was also no satisfactory evidence about any expenses incurred to preserve the Pageview Property or who was paying such expenses. Presumably, if fully rented, the rental income for the Pageview Property would cover such expenses. As a result, I find that Ms. Naidoo is not entitled to receive a contribution from Mr. Naidoo for costs she may have paid to maintain the Pageview Property between the date of separation and the date on which she purportedly transferred it to Desigan. After the purported transfer, presumably Desigan was paying those expenses.

Jewellery

- [349] Jewellery given by one spouse to the other during the relationship generally "falls back into the communal pot when the marriage ends": *M.N. v. C.G.F.*, 2019 BCSC 1406 at para. 124. In the absence of evidence of a contrary intent, the jewellery is a family asset. In this case, there is no evidence of a contrary intent.
- [350] Mr. Naidoo seeks an order for half of the value of the jewellery he says that he gave to Ms. Naidoo on regular celebratory occasions during their marriage. In her evidence, Ms. Naidoo did not deny that she had been given jewellery. She said that she also gave Mr. Naidoo jewellery during their marriage, but she did not provide an estimate of what her gifts to him were worth, nor did she cross-examine Mr. Naidoo about it. She also testified vaguely about giving Mr. Naidoo expensive clothing. However, he was not asked about it and clothing has no residual property value, so I need not deal with that issue.

- [351] Mr. Naidoo testified that over their many years together, he purchased jewellery for Ms. Naidoo on her birthdays, Mother's Day, their anniversary, and on the Indian equivalent of Christmas. When he bought the jewellery, he said he provided her with certificates of value and said she knew the value.
- [352] In the assets listed in his first Financial Statement filed on January 28, 2020, Mr. Naidoo valued the jewellery at \$120,000. His valuation remained consistent in each of the four later Financial Statements he filed, the last of which on July 3, 2023.
- [353] There is a dispute about the value of the gifted jewellery, and no reliable evidence in that regard. For example, there are no receipts for jewellery purchases, the jewellery has not been valued by an expert, and there are no photographs of it.
- [354] Ms. Naidoo testified that Mr. Naidoo has overvalued the jewellery. She does not dispute that Mr. Naidoo gave her jewellery and says that she gave him watches and jewellery as gifts. She testified that they were a lower- to middle-income family and did not have the resources to buy jewellery of the value stated by Mr. Naidoo.
- [355] In a demand letter sent to Ms. Naidoo on April 15, 2019, Mr. Naidoo's South African attorney, Salomie Stephen, wrote that Mr. Naidoo purchased items of jewellery for investment purposes in the approximate value of ZAR 300,000. She also said the jewellery was in Ms. Naidoo's possession and demanded half of its value. It is not clear how Ms. Stephen arrived at the value in the demand letter. When Mr. Naidoo was cross-examined about it, he said that it was a mathematical error.
- [356] Mr. Naidoo did not provide any receipts for his jewellery purchases over the years. He believed that some of the receipts were in the Pageview Property.
- [357] At another point in his evidence, Mr. Naidoo estimated that, after his construction business became successful, he spent about \$1,500 a year on jewellery for Mrs. Naidoo, including gold and diamonds.
- [358] Ms. Naidoo's first Financial Statement was filed on January 27, 2020. She did not list jewellery among her assets or assign any value to it. She also did not list or value the jewellery in her November 20, 2020 Financial Statement. In her September 28, 2023 Financial Statement, she lists jewellery as an asset for the first time, valuing it at \$10,000.
- [359] I conclude that it is probable that Mr. Naidoo has over-estimated, and Ms. Naidoo has under-estimated the value of the family jewellery. If I accept Mr. Naidoo's evidence that he was spending \$1,500 a year on jewellery for Ms. Naidoo, it would have taken 80 years to spend \$120,000.
- [360] Doing the best I can with the available evidence, I have concluded that it is appropriate to assign a value of \$80,000 to the jewellery.

- [361] I arrive at that figure by considering that the parties were first married in 1968. Based on when the parties left the Mimosa Property and moved to the Salvia Property and built on it, I estimate that Mr. Naidoo's business was doing well in about 1980, and that is when Mr. Naidoo started buying jewellery.
- [362] The parties separated in October 2018. I am certain, due to the acrimonious nature of their separation, Mr. Naidoo did not buy Ms. Naidoo jewellery after 2018. Thus, approximating a 40-year span of gifting at \$1,500 a year, a reasonable estimate of what Mr. Naidoo spent is \$60,000. I take judicial notice of the fact that, overall, the value of gold and diamonds has gone up in that period. While it is not possible to precisely determine the value of Ms. Naidoo's jewellery, doing the best I can with the available evidence, I value it at \$80,000. That value is to be divided equally and accounted for in the overall property division.
- [363] To the extent that either of the parties is unhappy with this result, they are responsible for the lack of evidence. It was open to Ms. Naidoo, who is in possession of the jewellery, to have it appraised, particularly because she knew that, as early as January 2020, Mr. Naidoo had assigned it a value of \$120,000.

Kia Optima ("Kia")

- [364] On April 20, 2017, Mr. Naidoo purchased a slightly used 2016 Kia. According to the bill of sale filed by Mr. Naidoo, he paid a \$20,000 deposit from the parties' joint RBC account and financed the \$19,368.91 balance with the Bank of Montreal as arranged by the dealership. Mr. Naidoo took the Kia with him when the parties separated, and he is still driving it.
- [365] Mr. Naidoo testified that, after about three or four months after the purchase, he paid off the balance of the loan from the parties' joint account using the balance of the proceeds of sale of the Myrtle Property that Primmithi had deposited.
- [366] On the evidence, there is no dispute that the Kia is family property. There is, however, a dispute about its value. In his early Financial Statements, Mr. Naidoo valued it at \$16,000. In his Financial Statement filed on April 29, 2022, he reduced the value to \$11,000, where it has remained. In her September 28, 2023 Financial Statement, Ms. Naidoo valued the Kia at \$20,000.
- [367] Neither party provided any independent evidence about the Kia's value. While an appraisal would make little sense in the circumstances, I have not been provided with evidence of sales of similar vehicles from online used car sites or other valuation sites. The only evidence of value is Mr. Naidoo's hearsay evidence that when he recently took the Kia in for servicing, he asked about its value, and was told by the person he spoke to that it was worth \$11,000. It was on that basis that he adjusted the value in his last Financial Statement. Mr. Naidoo was not cross-examined about what he was told, and his evidence was not objected to.
- [368] Ms. Naidoo did not testify about how she arrived at her value.

- [369] Doing the best I can with the available evidence, I assign a value of \$12,000 to the Kia. While it is possible that the Kia is worth more than that, in the absence of any evidence from Ms. Naidoo about its value, the best evidence available is what Mr. Naidoo learned at the dealership. I have slightly increased what the dealership suggested, to account for the fact that if the dealership was willing to buy the Kia for \$11,000, it would likely sell it for a higher amount.
- [370] As a result, Mr. Naidoo owes Ms. Naidoo an equalization payment of \$6,000 for the KIA, since he wishes to retain possession of the vehicle.

Nissan

- [371] On the date of separation, the parties also owned a Nissan. There is an evidentiary dispute about whether the Nissan was in working order. Ms. Naidoo testified that it would work for a short time and then stop.
- [372] Ms. Naidoo filed an application seeking to have Mr. Naidoo buy her a vehicle for the same amount that was paid for the Kia. Justice Funt dismissed that application on July 26, 2022. At some point, Ms. Naidoo said that she had sold the Nissan for \$500 after separation. As this is the only evidence as to its value, the proceeds of sale are to be divided equally.

Gold Coins

- [373] On the evidence, it appears that the parties had eight gold coins that were stored in a safety deposit box at the Toronto Dominion Bank. The parties attended at the bank, and each took four of the coins. As they were equally divided, I need not deal with this issue further.

Furnishings and other Family Assets Located in the Agassiz Property

- [374] In his Financial Statements, Mr. Naidoo has consistently valued the furnishings, including decorative items and household possessions (collectively, the "furnishings"), located in the Agassiz Property at \$36,700 and those in the Pageview Property at \$51,000. He seeks to have those values divided equally. He did not provide any evidentiary basis for his valuations of the furnishings in either property, and there is no inventory of them.
- [375] Ms. Naidoo says that Mr. Naidoo has overvalued the furnishings. She testified that many of them were bought at discount furniture stores or came from the Coquitlam Property when it was sold. She also testified that the furnishings in the Pageview Property are of little value.
- [376] There are no receipts for any of the furnishings. Nonetheless, when Mr. Naidoo left the Agassiz Property, he did not take any furnishings or other household items with him. He now lives at Menno Place and, presumably, now has all the furnishings he needs.

- [377] The listing for the Agassiz Property describes it as a 2,100 square foot home with three bedrooms and three bathrooms, a kitchen and eating area, a living room, a family room, an office, and a "nook". Assuming it is fully furnished, and accounting for the fact that the furnishings in Desigan's suite belong, at least in part, to him, I assign the admittedly somewhat arbitrary figure of \$12,000 to the movables in the Agassiz Property. In doing so, I consider that some of them were damaged in the altercation leading to the separation and that some of the furnishings were not new when they were moved to the Agassiz Property and were more than four years older on the date of separation.
- [378] On the same somewhat arbitrary basis, I have assigned a \$10,000 value to the furnishings and other household items in the Pageview Property which consists of five units of furniture, all of it likely well-used since the apartments were rented. The photographs of the interior of the Pageview Property show that they were basically furnished.
- [379] Mr. Naidoo is entitled to an equalization payment from Ms. Naidoo totalling \$11,000 for his share of the movables in both properties.

Bank Accounts

Mr. Naidoo's Bank Accounts

- [380] As set out in his January, 28, 2020 Financial Statement, Mr. Naidoo had the following amounts in his Canadian bank accounts as of October 23, 2018, the date of separation. I have rounded the amounts to the closest dollar:

Account

Amount

Scotiabank ending in 9326

\$1,655

Scotiabank ending in 1924

\$15,323

Scotiabank ending in 7211

\$400,000

Scotiabank ending in 6526

\$231

Bank of Montreal ending in 169

\$1,368

Bank of Montreal ending in 770

\$622

Bank of Montreal ending in 210 (TFSA)

\$25,507

Bank of Montreal ending in 650 (USD)

\$61,378 USD (equal to \$80,393 CAD)

TOTAL

\$525,099

[381] I have converted the cash in the Bank of Montreal account ending in 650 from \$61,378US to \$80,393 using the Bank of Canada exchange rate as of the date of separation. The total amount of \$525,099 was calculated by adding all the amounts in Canadian dollars.

[382] As of the date of the updated records included in Mr. Naidoo's documents and in his July 23, 2023 Financial Statement, that amount had diminished as Mr. Naidoo's living expenses exceed his income. Rounded to the nearest dollar, the accounts contained these amounts:

Account

Amount

Scotiabank ending in 9326

\$4,952

Scotiabank ending in 1924

\$37,074

Scotiabank ending in 7211

\$301,943

Scotiabank ending in 6526

Overdraft of \$10

Bank of Montreal ending in 169

\$2,072

Bank of Montreal ending in 770

\$629

Bank of Montreal ending in 210 (TFSA)

\$23,944

Bank of Montreal ending in 650 (USD)

\$25,513 (equal to \$32,731 CAD)

TOTAL

\$403,335

[383] Similar to the earlier table, I have converted the cash in the Bank of Montreal account ending in 650 from \$25,513US to \$32,731 using the Bank of Canada exchange rate as of May 22, 2022. The total amount of \$403,335 was also calculated by adding all the amounts in Canadian dollars.

[384] Everyday bank accounts are valued at the date of separation.

Ms. Naidoo's Bank Accounts

[385] Ms. Naidoo's financial disclosure was not nearly as complete as Mr. Naidoo's, despite court orders.

[386] She has produced an October 2016 statement from her Standard Bank account in South Africa that shows a balance of ZAR 22,867 and a First National Bank statement as of July 28, 2018, that showed an opening balance of ZAR 37,583 and from which ZAR 34,000 was transferred to "Mom Invest". She introduced them, and a number of credit card statements, at trial for the purpose of showing that they were legitimate accounts in her name. They do not establish what money she held in her accounts as of the date of separation.

[387] In her September 28, 2023 Financial Statement, she indicates that she has a combined total of \$363 (rounded to the nearest dollar) in a CIBC bank account and a Prospera Credit Union account.

[388] I note that she lists no financial assets in her November 22, 2019 Financial Statement.

[389] I find it difficult to believe, in light of what she otherwise sets out as her expenses in her Financial Statement, that Ms. Naidoo has no other funds available to her. Nonetheless, Ms. Naidoo's limited evidence of financial capacity at the date of separation is supportive of Mr. Naidoo's evidence that, after the Coquitlam Property was sold, he kept cash to pay their joint expenses while title to the Agassiz Property was registered in Ms. Naidoo's name. I also take into account Ms. Naidoo's stated credit card debts and the fact that she has been paying them down.

Family Debt

[390] In his latest Financial Statement, Mr. Naidoo only records one debt in the amount of \$100,000, which he says Angeni is owed. He provided little explanation in his evidence of the nature of that debt. I cannot find that this is a family debt.

- [391] In particular, Mr. Naidoo testified that Angeni was a part owner of the Coquitlam Property and that she should have received a portion of the proceeds. I accept that Angeni was an authorized signing officer for Naidoo Enterprises that was, at least for immigration purposes, registered as a borrower on the mortgage of the Coquitlam Property. The evidence was not clear whether Angeni was also a shareholder in Naidoo Enterprises. As set out earlier in these reasons, the borrowers on the Mortgage were Mr. Naidoo, Ms. Naidoo, Angeni, and Primmithi together as to an undivided 3/10 interest and Naidoo Enterprises as to an undivided 7/10 interest. I have found that the mortgage reflected the registered interest in the title. However, there was no evidence that the proceeds of sale of the Coquitlam Property were divided in accordance with the registered title. In particular, there was no evidence that 7/10 of the proceeds went to Naidoo Enterprises.
- [392] It is not possible on the evidentiary record to determine the validity of Angeni's debt claim. During cross-examination Mr. Naidoo was asked whether Angeni was still claiming \$100,000, and he responded that she was not, but he felt she was entitled to do so.
- [393] In any event, Angeni is not a party to this litigation, and, if she was seeking an interest in the division of the parties' family property, she should have sought to be added as a party. She was clearly aware of these proceedings as she was actively involved in assisting her father. I make no finding as to the alleged debt to Angeni or whether it is a family debt.
- [394] In her F8 Financial Statement, Ms. Naidoo lists a number of debts with respect to bank accounts and credit cards that she said were closed. They purport to relate to a range of dates starting one or two years before separation and ending one or two years post-separation. As family debt is normally calculated as of the date of separation, and since the burden is on Ms. Naidoo to satisfy me that the debts she lists are family debts, I find that I do not have the evidence I require to determine whether the listed debts are family debts. Ms. Naidoo has not satisfied her burden of proof.
- [395] On the proven evidence, there are no debts to be divided.

Summary of Family Property and Debt Orders

- [396] The determined value of the Agassiz Property is to be divided equally. The following amounts are to be set off against Ms. Naidoo's share of the value. For clarity, this means that Ms. Naidoo's half share shall be reduced by, and Mr. Naidoo's share increased by, the following amounts:
- i. One half of the value of the Pageview Property as determined by the process set out in paras. 346 and 347 of this decision;
 - ii. \$47,787.50 for occupation rent;
 - iii. \$11,000 for his share of the movables in the Pageview and Agassiz Properties;
 - iv. \$40,000 for the family jewellery;

- v. \$250 for the proceeds of sale of the Nissan; and
 - vi. \$181.50 for the amount in Ms. Naidoo's bank accounts as of the date of separation.
- [397] The following amounts are to be set off against Mr. Naidoo's share:
- i. \$6,000 for the Kia Optima;
 - ii. \$262,550 for the amount in Mr. Naidoo's bank accounts as of the date of separation;
 - iii. Half of the agreed-upon, or assessed and certified payments for property taxes, insurance, and repairs or maintenance paid for by Ms. Naidoo between the date of separation and September 20, 2024, in respect of the Agassiz Property;
 - iv. Half of the costs paid for by Ms. Naidoo for the Re/Max opinion on the realistic selling price of the Pageview Property.

Final Issues

- [398] I have not dealt with Mr. Naidoo's claim in respect of the value of a 2005 Mercedes in South Africa. There was very little evidence about it, and I have no evidence as to its value or condition. It may well have been sold by Desigan and the proceeds retained by him. If Desigan sold the Mercedes, subject to any applicable limitation period, Mr. Naidoo may have a claim against him for the proceeds.
- [399] I have also not dealt with Mr. Naidoo's claim that Ms. Naidoo has collected more than \$198,000 in rent on the Pageview Property. This was not the subject of evidence at trial, and I have no idea how this figure was arrived at. It is my understanding, based on the evidence, that Desigan was collecting the rent on the Pageview Property and that he may have kept it. If that is the case, then there is no evidence that he remitted the rent to Ms. Naidoo. I accept that in Ms. Naidoo's bank account records produced by Mr. Naidoo (not by her), he noted some payments into her account that he suggested were remittances of rents from the Pageview Property. There are relatively few of them, and Ms. Naidoo was not cross-examined about them. I am unable to reach any conclusions in that regard.
- [400] At different points in his evidence, Mr. Naidoo accused Desigan of depriving both of his parents of the Pageview Property rental income. If Mr. Naidoo wished to pursue this issue against his son, Desigan should have been added to this proceeding. Subject to any applicable limitation period, it may be open to Mr. Naidoo to pursue a remedy in another proceeding.

Conclusion

- [401] In addition to the property division orders set out above, I make the following orders:

- a) Pursuant to s. 12 of the Divorce Act, Neelamagan Naidoo and Tinygee Naidoo, who were married at Johannesburg, South Africa, on December 2, 1983, are divorced from each other, the divorce to take effect on the 31st day after the date of this order.
- b) Ms. Naidoo's application for spousal support is dismissed.
- c) Within thirty days, Tinygee Naidoo shall provide Neelamagan Naidoo with a summary of the property taxes, insurance, maintenance and improvement expenses she paid for the Agassiz Property from October 23, 2018-September 20, 2024, to be supported with receipts or other documentary proof. The parties shall attempt to agree on the amount Mr. Naidoo is to pay towards these expenses to be set off against the amount Ms. Naidoo owes to Mr. Naidoo. If the parties are unable to agree on the amount of the expenses, they are to appear before a Registrar of the Court for an assessment and certification of the appropriate expenses.

[402] I recognize that the division of family property that I have ordered, and the equalization payment that Ms. Naidoo is required to make to Mr. Naidoo, may require the Agassiz Property to be sold. If a sale is required, it is to be on the following terms:

- 1) Within thirty days of receipt of the Re/Max opinion as to a realistic selling price for the Pageview Property, Ms. Naidoo is to advise Mr. Naidoo whether she is able to pay him the equalization payment he is entitled to under this judgment. Any such equalization payment is to be made within sixty days of receipt of the Re/Max opinion.
- 2) If Ms. Naidoo is not able to make the equalization payment, then, pursuant to Rule 15.8 of the Supreme Court Family Rules, the Agassiz Property located at 6897 Fraser Drive, Agassiz, BC, and more particularly described as:

Lot 4, Plan BCP 37230,

District Lot 19, Group 1

Yale Div of Yale District

PID: 027-585-841

will be listed for sale and remain listed for sale until sold upon the terms set out herein.

- 3) The parties shall both sign a 90-day Multiple Listing Service Contract ("MLS Contract") listing the Agassiz Property for sale with a realtor to be determined on the following basis:
 - a. The parties will each invite one realtor of their choice to prepare a listing recommendation, including:
 - i. a recommended list price and listing date;
 - ii. a realistic selling price;
 - iii. a proposed marketing plan; and

- iv. any recommended maintenance, repairs, or staging required to prepare the property for sale and before listing,
- b. Ms. Naidoo will, as soon as possible, at the request of either of the invited realtors, facilitate their access to the Agassiz Property for the purpose of preparing their listing recommendation.
 - c. After receipt of the realtor's listing recommendations, the parties will select a realtor (the "Selected Realtor") and sign a 3-month Multiple Listing Contract with them for the sale of the Agassiz Property and at the listing price recommended by that realtor. The Selected Realtor will be provided with a copy of this order.
 - d. If the parties cannot agree on which realtor to select, the listing recommendations shall be submitted to Justice MacNaughton's attention, through the Supreme Court Registry, Justice MacNaughton will then select the realtor to list and market the Agassiz Property.
 - e. Mr. Naidoo and Ms. Naidoo will make their best efforts to cooperate on which of the Selected Realtor's recommended maintenance, repairs, or staging, will be completed and how the Selected Realtor's recommendations will be financed. If they are unable to agree, the Agassiz Property will be marketed and sold as-is.
 - f. The parties will share equally the costs of any agreed-upon repairs, maintenance, and staging not to exceed \$5,000 unless otherwise agreed by the parties in writing.
 - g. If, after 30 days on the market at the recommended list price, there have been no offers to purchase the Agassiz Property, on the recommendation of the Selected Realtor for a reduction in the listing price, the listing price will be reduced as recommended and, if the property continues to remain unsold, the listing price will be reduced at 30-day intervals, on the advice of the Selected Realtor, until the MLS Contract expires.
 - h. If the MLS Contract expires prior to the Agassiz Property being sold, the parties may opt to change the Selected Realtor using the same process that was used for the initial selection and will sign a further MLS Contract. They will keep the property listed until sold.
 - i. The parties will have joint conduct of the sale, and Ms. Naidoo will be responsible for arranging all showings and keeping the home in a showable condition. Ms. Naidoo will facilitate: all photography and videography recommended by the Selected Realtor; and any private showings and open houses.
 - j. The Selected Realtor will communicate with both parties in writing by email and will provide copies of all offers to purchase to both parties.
 - k. The parties will be entitled to communicate directly with the Selected Realtor and receive periodic updates from the Selected Realtor;
 - l. Mr. Naidoo will not attend the Agassiz Property at any showings or open houses, and he will not send anyone on his behalf, including family members, friends, or agents.

- m. The parties will cooperate as required to maximize the sale price and will make reasonable efforts to obtain a closing date for the sale permitting Ms. Naidoo 30 days, or such other period as agreed, to relocate.
 - n. Both parties must approve and sign any offer to purchase the Agassiz Property. If they are unable to agree on whether to approve and sign, either is at liberty to refer the offer to Justice MacNaughton's attention through the Supreme Court Registry for approval together with brief written submissions, not to exceed two pages, and to provide any written recommendation or advice from the Selected Realtor regarding any offer. If necessary, Justice MacNaughton may require the Selected Realtor to appear in Chambers.
- 4) To facilitate the closing of the sale of the Agassiz Property, Mr. Naidoo will arrange for the removal of the CPL and the Land (Spouse Protection) Act claim registered against title.
- 5) After closing, the Agassiz Property sale proceeds will be distributed as follows:
- a. To pay any commissions, disbursements, adjustments and/or usual fees related to the sale;
 - b. To pay any deferred property taxes (including any interest and/or fees relating to same);
 - c. To reimburse the party who finances repairs, maintenance, and/or staging expenses;
 - d. To satisfy the parties' respective property division entitlements set out in this decision.

Costs

[403] The parties did not make submissions as to costs. Considering Mr. Naidoo's substantial success in these proceedings, he is entitled to his costs on a scale of ordinary difficulty. However, the parties may have exchanged formal settlement offers that would result in a costs order on a different scale. If offers were made, the parties may seek to speak to costs by contacting Supreme Court Scheduling within 30 days of release of these reasons.

"MacNaughton J."

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