

CANADA / JUDGMENT

Poon v. Yuen

2024 BCCA 374

COURT

British Columbia Court of Appeal

DECIDED

31 October 2024

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2024 BCCA 374 Poon v. Yuen

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Poon v. Yuen,

2024 BCCA 374

Date: 20241031

Docket: CA47822

Between:

Sau Kwan Poon also known as Sau-Kwan Poon

Appellant

(Claimant)

And

Ki Way Yuen also known as Ki-Way Yuen

Respondent

(Respondent)

Before:

The Honourable Justice Griffin

The Honourable Mr. Justice Butler

The Honourable Justice Riley

On appeal from: An order of the Supreme Court of British Columbia, dated

September 15, 2021, and oral ruling dated October 21, 2021

(Poon v. Yuen, 2021 BCSC 1809, Vancouver Docket E181194).

Oral Reasons for Judgment

Counsel for the Appellant:

W.M. Wong

S. Wai, Articled Student

Counsel for the Respondent:

G.K. Yu

Place and Date of Hearing:

Vancouver, British Columbia

October 31, 2024

Place and Date of Judgment:

Vancouver, British Columbia

October 31, 2024

Summary:

The appellant challenges the trial order dividing family property unequally, 60/40 in the appellant's favour. She argues the trial judge's method of calculating the unequal division resulted in her receiving a lower amount than she should have. Held: Appeal dismissed. The appellant did not identify any error that would permit appellate intervention. The trial judge correctly stated the legal principles applicable under s. 95 of the Family Law Act and applied relevant factors. There is no single correct method of calculating the appropriate unequal division of family property.

[1] BUTLER J.A.: Sau Kwan Poon appeals from a property division order made by Justice Jackson following a 16-day trial (the "Order"). Pursuant to s. 95 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], the judge found that it would be significantly unfair to equally divide the parties' family property. The judge found three bases for unequal division: 1) Ms. Poon had contributed disproportionately to the maintenance of family property; 2) for more than 15 years, the respondent, Ki Way Yuen, had diverted substantial funds to another woman, Ms. Wang, with whom he had a child; and 3) after separation, Mr. Yuen withdrew more than a million dollars from a bank account and directed the funds to another party. The Order provided that the family property, with a total value of \$6,911,673.03, would be divided 60/40 in favour of Ms. Poon.

- [2] On appeal, Ms. Poon submits that the Order does not effect the division of property that the judge intended to award. In her factum, she describes the alleged error in a variety of ways, but the import of her arguments is that the way in which the judge calculated the unequal division of property failed to adequately compensate Ms. Poon for her unequal contribution to the maintenance of family property and for the amounts that Mr. Yuen diverted from family property.
- [3] In my view, Ms. Poon is unable to identify any error that would permit this Court to interfere with the Order. I would dismiss the appeal.

Background

- [4] The parties were married for 50 years and have no children together. They are both in their 80s. The reasons for judgment, indexed at 2021 BCSC 1809 ("RFJ"), set out the history of the relationship and the issues at trial. In addition to dividing property, the judge granted an order for divorce and dismissed Ms. Poon's claim for spousal support. On appeal, those orders are not challenged. Further, neither party challenges the judge's findings of fact or contests her statement of the applicable legal principles. Accordingly, my description of the background relevant to the issue on appeal is succinct.
- [5] At trial, the parties generally agreed "on what is their family property and its value": RFJ at para. 6. The family property was found to have a total value of \$6,911,673.03, consisting of real property in Vancouver, Hong Kong and China, personal chattels and several bank accounts. Mr. Yuen sought an equal division of the family property but Ms. Poon sought unequal division on the basis that an equal division would be significantly unfair. The judge accepted Ms. Poon's position and ordered an unequal division of the family property for the three reasons noted above.
- [6] The judge valued the disproportionate contributions that Ms. Poon made to the Vancouver and Hong Kong properties, but did so without calculating the amount by which her contributions exceeded those of Mr. Yuen. However, it is possible to infer from her reasons that she found that Ms. Poon should receive approximately \$213,000 to compensate her for what the judge described as the "marked, prolonged, and intentional disparity in the parties' respective contributions": RFJ at para. 41.
- [7] The judge found that Mr. Yuen had removed \$1,050,575 from one of his bank accounts shortly after separation and transferred those funds to another person. In addition, she found that Mr. Yuen had made payments to Ms. Wang over the years totaling \$961,400. The judge concluded that those payments (collectively, the "Unfair Transfers") adversely affected Ms. Poon's interest in the family property.

- [8] In light of these findings, the judge concluded that Ms. Poon should receive an unequal share of family property totaling \$1,219,039. That sum was found to represent 50% of the Unfair Transfers, plus an amount to compensate Ms. Poon for the disparity in contributions to the maintenance of property.
- [9] In arriving at her conclusion, the judge reasoned as follows:
- [52] I have concluded the equal division of family property in this case would be significantly unfair. In my view unequal division that results in the claimant receiving the benefit of 50% of the money she paid for household expenses for Mei Foo and the Vancouver property, 50% of funds the respondent gave to Ms. Wang, and 50% of the April Withdrawal, with a collective value of \$1,219,039, is appropriate.
- [53] The family property has a total value of approximately \$7,000,000. For the reasons above, the family property shall be divided unequally with the claimant receiving 60% of the family property and the respondent receiving 40%.
- [10] After receipt of the reasons for judgment, the parties appeared before the judge on October 21, 2021 for clarification on two issues, including the unequal division of family property. The judge issued oral reasons at that hearing, and stated:
- [3] First, with respect to the 60/40 division, the way I approached it was as [counsel for Mr. Yuen] has characterized it in his submissions. I started off with the asset pool, which I said roughly \$7 million, but \$6.9 million less what I thought was the significant unfairness as I quantified it, that is \$1.219039 million, and that left roughly \$5.692 million, and so divide that by two. In other words, the way that I approached the math was to first deduct what I considered to be the quantification of the significant unfairness, and then divide what was left by two, and when I did that, I came up with \$2,846,317 for each of the parties, but then adding in, roughly, the \$1,219,000, so that would have equated to \$4,065,317 for the claimant. So that is how I came to the 60/40 split, but I ordered a 60/40 split so she actually got a little bit more than the \$1.219 million based on the 60/40 split, but it was not a 50/50 plus the \$1.219 million. I think that there is a significant unfairness to the tune of about \$1.219 million, and so what that equates to is a 60/40 split of the \$6.9 million. So that is how I did the math, so that is my clarification on that.

[Emphasis added.]

See *Poon v. Yuen* (21 October 2021), Vancouver Docket E181194 (B.C.S.C.) (the "Oral Reasons").

- [11] The judge also clarified her decision not to make an order dividing Ms. Poon's Hong Kong pension between the parties. She acknowledged that Mr. Yuen could have sought an order for division of extra provincial family property with respect to the pension but was not inclined to grant that relief because it could upset the balance of the award as determined based on the evidence led at trial.

- [12] Pursuant to the terms of the Order, Ms. Poon received 60% of the total value of the family property (\$4,147,003.82) while Mr. Yuen received 40% of the family property (\$2,764,669.21). By dividing the family property 60/40, Ms. Poon received \$1,382,334.61 more than Mr. Yuen.

Positions of the Parties

- [13] On appeal, neither party takes issue with the fact the judge divided property unequally, nor do they dispute the judge's quantification of the amount representing significant unfairness--\$1,219,039 (the "Unfair Amount"). Both parties also agree that the standard of review which applies is highly deferential, as reapportionment is a discretionary decision.

Ms. Poon

- [14] Ms. Poon's principal argument is that the judge erred in calculating the unequal division of family property. She argues that the judge's reasons indicate an intention to award the entire benefit of the Unfair Amount to Ms. Poon, but the manner in which the judge calculated the 60/40 division gave her something less. Essentially, Ms. Poon argues that the calculation error resulted in her receiving a much smaller share of the family property--by about half a million dollars--than she should have received.
- [15] Ms. Poon specifically takes issue with the way the judge explained how she came to the 60/40 percentage split. To re-iterate, the judge:
- a) subtracted the Unfair Amount from the pool of family property of approximately \$6.9 million,
 - b) divided the remainder in half, and then
 - c) added the Unfair Amount onto Ms. Poon's half share.

This calculation would leave Ms. Poon with approximately \$4.07 million and Mr. Yuen with \$2.85 million. As the judge noted, she awarded a 60/40 unequal property division because it left both parties with a share of the family property close to these amounts: approximately \$4.15 million for Ms. Poon; and \$2.76 million for Mr. Yuen.

- [16] Ms. Poon argues that this method of calculation essentially treated the Unfair Amount as a joint family debt, which unfairly prejudiced her as she should not have to bear any responsibility for Mr. Yuen's dissipation of assets. Ms. Poon also alleges that the judge's calculation method resulted in Mr. Yuen being unjustly enriched by \$527,000 and denied her the full benefit of the Unfair Amount.
- [17] Ms. Poon supports these arguments by comparing the judge's method of calculation with two alternatives. Both alternate methods leave Ms. Poon with approximately \$4.68 million and Mr. Yuen with approximately \$2.24 million.
- [18] Ms. Poon's first suggested calculation involves:

- a) dividing the asset pool of approximately \$6.9 million in half, then
- b) subtracting the Unfair Amount from Mr. Yuen's share and adding the Unfair Amount to Ms. Poon's share.

Although Ms. Poon does not label it as such, this method essentially treats the Unfair Amount as a compensatory award as she would receive approximately \$2.4 million dollars (two times the Unfair Amount) more than Mr. Yuen. I will refer to this proposed alternative method of calculation as the "Compensatory Award Method".

[19] The second method of calculation Ms. Poon proposes, and appears to rely on more heavily, is to start with an asset pool of approximately \$9.36 million (the "Total Asset Pool"). This Total Asset Pool is made up of the existing asset pool of approximately \$6.9 million, plus double the Unfair Amount (approximately \$2.438 million). Ms. Poon calls this \$2.438 million amount the "total dissipated amount", as it represents Ms. Poon's total unequal contribution towards maintenance of family property, as well as the total funds Mr. Yuen unfairly dissipated to Ms. Wang and others. Ms. Poon argues that the total dissipated amount was family property, and so it should have been included in the asset pool, even though it no longer existed at the time of trial.

[20] Accordingly, Ms. Poon argues that the judge should have:

- a) divided the Total Asset Pool of approximately \$9.36 million in half,
- b) awarded Ms. Poon a half share of approximately \$4.68 million, and then
- c) awarded Mr. Yuen what was left from the existing asset pool after Ms. Poon's \$4.68 million share is deducted--approximately \$2.24 million.

I will refer to this proposed method of calculation as the "Total Asset Pool Method".

[21] Ms. Poon argues that this Total Asset Pool Method is correct because it adheres to the presumption of equal division of family property under the FLA. In support of this argument, Ms. Poon relies on the cases of *Salman v. Astifan*, 2021 BCSC 1395 and *Smith v. Smith*, 2023 BCSC 991. Ms. Poon says that in both of these cases, the court followed the presumption of equal division and then accounted for any unfairness, rather than deducting the amount of unfairness from the existing asset pool as the judge in this case did.

Mr. Yuen

[22] Mr. Yuen's position is that the judge made no error in dividing the assets in the way she did, and that her exercise of discretion should not be interfered with. He notes that this was a complex, lengthy family law proceeding involving multifaceted issues, and that the law does not provide an exact mathematical formula for achieving an unequal division. Mr. Yuen says that the judge made it clear in the Oral Reasons that, in making the 60/40 unequal division, she had achieved a balance in the award with which she was satisfied.

[23] Mr. Yuen also says that at trial, Ms. Poon sought a compensation order which would have resulted in the same monetary division of property Ms. Poon argues for on appeal: approximately \$4.68 million to Ms. Poon; and \$2.42 million to Mr. Yuen. The judge declined to grant this compensation order. Mr. Yuen says the issue of an existing asset pool versus total asset pool that Ms. Poon's Total Asset Pool Method relies on was never raised or argued before the judge, as the parties agreed the asset pool was \$6.9 million.

Standard of Review

[24] The standard of review which applies to family law matters, including property division, is highly deferential: *Jean Louis v. Jean Louis*, 2020 BCCA 220 at para. 24. This level of deference is necessary "to promote finality and to recognize the importance of the appreciation of the facts by the trial judge, who has had the benefit of hearing the parties directly": *Jean Louis* at para. 24. This Court has held that reapportionment is an exercise of a judge's discretion, and an appellate court is only justified in intervening "if the trial judge misdirects himself or herself or is so clearly wrong as to amount to an injustice": *Storey v. Terry*, 2020 BCCA 30 at para. 18, citing *Hickey v. Hickey*, [1999] 2 S.C.R. 518, 1999 CanLII 691 at para. 12.

Analysis

[25] The difficulty with Ms. Poon's position on appeal is that she cannot point to any error in the judge's statement or application of the relevant legal principles regarding unequal division of family property. Her argument focuses solely on the method of calculation the judge used to arrive at the 60/40 unequal division of property. She argues that if the judge had applied a proper method, she would have received a greater portion of the family property.

[26] I do not accept Ms. Poon's suggestion that there is a correct method of calculating the appropriate unequal division of family property in the circumstances of this case, or indeed, in any particular case. A judge's decision to effect an unequal division of family property must be based on the factors set out in s. 95(2) of the FLA and the judge's discretion must be exercised in accordance with the principles set out in the jurisprudence. However, there is no single correct method of calculation, just as there is no single correct amount of reapportionment.

[27] As I have indicated, the judge cited the relevant provisions of the FLA. Referring to *Jaszczywska v. Kostanski*, 2016 BCCA 286, the judge observed that the threshold for establishing significant unfairness is high, and that it requires "something objectively unjust, unreasonable, or unfair in some important or substantial sense having regard to the factors set out in s. 95(2) of the FLA": RFJ at para. 25. In deciding that it was appropriate to order unequal division, the judge accepted that she should do so based on consideration of the factors set out in s. 95(2)(g) and (i) of the FLA. No challenge is taken to the judge's approach or application of the relevant factors.

- [28] As noted in *Jaszczywska*, at paras. 36-37, the purpose of the legislative reform from the Family Relations Act, R.S.B.C. 1996, c. 128 was to limit and control the exercise of judicial discretion in reapportioning property in order to foster certainty and predictability in the law. Nevertheless, when ordering unequal division of family property, a judge is undertaking a pure exercise of judicial discretion. It is not a mathematical exercise.
- [29] In short, as the judge correctly stated the legal principles and applied relevant factors, there is no principled basis on which this Court could interfere with the ordered division of family property.
- [30] Neither of Ms. Poon's two proposed alternative methods of calculation--the Compensatory Award Method and the Total Asset Pool Method--show that the trial judge's unequal division was so clearly wrong as to amount to an injustice. I will deal with each method of calculation in turn.
- [31] As I stated earlier, Ms. Poon's first alternative method of calculation essentially treats the Unfair Amount as a compensatory award. At trial, Ms. Poon made the argument to the judge that she should grant Ms. Poon a compensatory award as a result of Ms. Poon's unequal contributions and Mr. Yuen's dissipation of assets. The judge declined to do so, instead awarding a 60/40 split to reflect the Unfair Amount. The judge makes this explicit in the Oral Reasons, stating: "it was not a 50/50 plus the \$1.219 million": at para. 3. Ms. Poon's first method of calculation therefore amounts to making the same argument the judge clearly rejected.
- [32] The judge does state in her reasons that unequal division "that results in the claimant receiving the benefit of \$1,219,039 is appropriate": RFJ at para. 52. However, the trial judge's decision is not inconsistent with this statement, as Ms. Poon argues. The trial judge made an award of 60/40 unequal division to give Ms. Poon the benefit of the Unfair Amount, and the unequal division resulted in Ms. Poon receiving approximately \$1.3 million more than Mr. Yuen. In these circumstances, Ms. Poon did receive the benefit of the Unfair Amount. The fact Ms. Poon could have received a higher award if the judge had calculated the property division in a different manner does not amount to an error in these circumstances.
- [33] Ms. Poon's second alternative method of calculation, the Total Asset Pool Method, does not appear to have been before the trial judge. In addition, Ms. Poon has not pointed this Court to any authority that stands for the proposition that judges, in considering significant unfairness arising from dissipation of family assets, must follow a specific mathematical formula like the Total Asset Pool Method.
- [34] The cases Ms. Poon cites, *Smith* and *Salman*, do not assist in this regard. In *Smith*, the judge awarded unequal division in the amount of \$200,000 rather than on a percentage split basis. In *Salman*, the judge made an unequal division of family property which was to be adjusted if the family home sold for less than its valuation, so as to ensure that the claimant received full credit for the amount of significant unfairness the judge found. In both cases, the judges made discretionary decisions of how to account for the unfairness they found on the facts

before them. Neither of these cases stand for the proposition that judges must always account for unfairness in the same mathematical manner.

- [35] Ms. Poon's argument that the Total Asset Pool Method is correct because it adheres to the presumption of equal division under the FLA is also fundamentally flawed. The judge explicitly found that "equal division of family property in this case would be significantly unfair" and that "given the facts of this case, the objectives of the FLA are best met through the unequal division of family property": RFJ at paras. 52, 33. Ms. Poon has not challenged that finding on appeal, and there is no basis to disturb the judge's finding in any event.
- [36] Finally, I turn to Ms. Poon's argument that the trial judge's award unjustly enriched Mr. Yuen. Unjust enrichment, as an equitable doctrine, has a role in family law claims to fill gaps not covered by legislation: *Peter v. Beblow*, [1993] 1 S.C.R. 980, 1993 CanLII 126 at 994; *Kerr v. Baranow*, 2011 SCC 10 at para. 45. As the Supreme Court held when discussing unjust enrichment in family law cases, "[i]t is precisely where an injustice arises without a legal remedy that equity finds a role": *Peter* at 994.
- [37] There is no statutory gap to be filled by unjust enrichment in this case. Ms. Poon already had a legal remedy under the FLA for any injustice she suffered because of the breakdown of the parties' marriage, as is evidenced by the trial judge's decision in this case. The judge dealt with the financial unfairness arising from the dissolution of the parties' marriage by awarding a 60/40 property division in Ms. Poon's favour.
- [38] Neither of the cases Ms. Poon relies on, *Kerr* and *Judge v. Judge*, 2015 BCSC 1764, assist. Both were decided under the predecessor to the FLA, the Family Relations Act. In *Kerr*, the claimant had to rely on unjust enrichment because there were no provisions in the Family Relations Act applicable to division of property for common-law spouses. In *Judge*, the claimant spouse was seeking a claim over property owned by her spouse's parents. The claimant had to rely on unjust enrichment because there were no provisions of the Family Relations Act which could effect division of property that was not owned by one of the spouses in these circumstances. Unlike in *Kerr* and *Judge*, the provisions of the FLA apply to all property at issue in this case. The doctrine of unjust enrichment is inapplicable.

Disposition

- [39] I would dismiss the appeal.
- [40] GRIFFIN J.A.: I agree.
- [41] RILEY J.A.: I agree.
- [42] GRIFFIN J.A.: The appeal is dismissed.

"The Honourable Mr. Justice Butler"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/ca/24/03/2024BCCA0374.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/poon-v-yuen-2024-bcca-374>

Prepared on 26 October 2026 · Esheria