

CANADA / JUDGMENT

Romanchuk v. Romanchuk

2023 BCSC 2051

COURT

Supreme Court of British Columbia

DECIDED

18 May 2023

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2023 BCSC 2051 Romanchuk v. Romanchuk

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Romanchuk v. Romanchuk,

2023 BCSC 2051

Date: 20230518

Docket: E51283

Registry: Vernon

Between:

Nancy Lynn Romanchuk

Claimant

And

Danny Lee Romanchuk

Respondent

Before: The Honourable Mr. Justice Riley

Oral Reasons for Judgment

Counsel for the Claimant:

N.A. Vlahos

The Respondent, appearing on his own behalf:

D. Romanchuk

Place and Date of Trial:

Vernon, B.C.

May 15-17, 2023

Place and Date of Judgment:

Vernon, B.C.

May 18, 2023

[1] THE COURT: These are reasons for judgment following a three-day trial in a family law case.

Introduction

[2] The issues narrowed somewhat over the course of the trial. At the outset, there was an issue about child support for the couple's adult dependant child but, by the end of the trial, it was common ground that there was no basis in the record for an order requiring Ms. Romanchuk to pay child support. There was also a claim by Ms. Romanchuk for excluded property, but that too evaporated as the evidence came out because Ms. Romanchuk was unable to prove, with any reasonable degree of certainty, the value of any property that pre-existed the spousal relationship. What remains to be decided is the following. First, there is the matter of division of family property and debt, and in particular: (a) the former family residence; (b) credit card debt; and (c) the family business. Second, there is the issue of spousal support.

Facts

- [3] By way of background, the parties met in Alberta and were in a relationship from about 1990 until 2015, so it was a 25-year relationship.
- [4] Ms. Romanchuk had three children from prior relationships and the parties had two children of their own, namely Kaitlyn, who is now 30 years old, and Jordan, who is now 29.
- [5] The parties moved from Medicine Hat to the Vernon area in or about 2000. At the time of the move, the children would have been six and seven years old respectively. The parties sold their home in Medicine Hat and used some of the funds to support their purchase of a restaurant which they intended to operate as a family business.
- [6] Once in Vernon, the parties rented a house for several years before acquiring the family home on Priest Valley Drive in Coldstream in 2004. The parties lived there until their separation in 2015, at which point Ms. Romanchuk returned to Alberta and Mr. Romanchuk remained in the family home, where he continues to live to this day with the youngest child, Jordan.
- [7] I will next address the history of the family businesses.

- [8] At some point after relocating to Vernon, the parties bought a restaurant, Joey's Only, which they operated until about 2009 or 2010. There was some debate in the evidence about the contribution of each of the family members to the restaurant. The evidence reflects that Mr. Romanchuk ran the restaurant and worked at it full-time. With respect to Ms. Romanchuk, she contributed to a lesser extent by, among other things, cooking soups and pies, although even Ms. Romanchuk herself seemed to concede in her testimony that she was not nearly as involved in the business as Mr. Romanchuk was.
- [9] In or about 2010, the parties sold the restaurant and went into the janitorial services business. The name of their company is JAKKS. It is an incorporated business with two shareholders, being Mr. Romanchuk and Ms. Romanchuk. It is not really disputed that Mr. Romanchuk has been running this business on his own since inception, although Ms. Romanchuk and Mr. Romanchuk were and continue to be the business owners.
- [10] It is fair to say that JAKKS has been and continues to be a successful and profitable business. The company's revenue was \$633,000 in 2011 and it has increased steadily since then, reaching \$926,000 in 2015. Since the parties separated, the company's revenues have been more or less at the same level with some fluctuations, but its profitability has increased significantly, such that the company's overall financial position and its value have markedly increased.
- [11] At separation in 2015, the company had a value of \$75,000 to \$85,000, but the net value was zero when one accounted for the outstanding shareholder loan account of some \$163,000 for the benefit of the parties personally. Since separation, the company has paid down the shareholder loan and, as I say, the company's profitability has increased, and the current assets and cash on hand have increased. The company is now said to be worth some \$350,000 to \$410,000. To be clear, this value is not based on an assessment of the company's balance sheet, per se, but on its earnings and profitability which, according to the expert, is the true measure of worth of any small business that would be marketed as a going concern.
- [12] I am next going to discuss, however briefly, the living arrangements of the parties since separation.
- [13] Ms. Romanchuk describes in her testimony how she has had serious challenges with her health. There is also evidence that Ms. Romanchuk has struggled with and continues to struggle with substance abuse.
- [14] In 2015, Ms. Romanchuk lost her son from a prior relationship to a drug overdose, and shortly after that the parties were separated. By this time, the two children of the marriage were both adults.
- [15] Ms. Romanchuk left Vernon and moved back to Alberta, and since then has been living in rented accommodation, sometimes with relatives. It is fair to say that her living situation has not been particularly stable. In any event, Ms. Romanchuk has been out of the family home and for most, if not all, of the time in issue she has had to pay rent.

- [16] Ms. Romanchuk is unable to work due to her medical issues and her continuing challenges with substance abuse. She has no real history of working outside the home past at least the year 2000, beyond providing some contribution to the family restaurant business back in the early 2000s. She has been subsisting on spousal support of \$1950 per month by way of a consent order.
- [17] Mr. Romanchuk has regularly paid support of \$1950 per month, with the exception of a two-month period when he stopped paying, before Ms. Romanchuk registered with FMEP and those amounts were collected back.
- [18] For his part, Mr. Romanchuk continues to reside in the family home with Jordan, who is developmentally disabled. I will discuss Jordan's situation in a bit more detail in a moment. To continue and complete the summary of Mr. Romanchuk's current living arrangement, as I say, he has been living in the former family residence and paying down the mortgage.
- [19] Mr. Romanchuk has been working full-time, running and continuing to grow JAKKS which, as noted is a successful small business that now has 10 employees and many, many contracts for janitorial and cleaning services throughout the region. Mr. Romanchuk has also made significant expenditures on maintenance of the family home since separation which have cost him out of pocket, and no doubt have helped to preserve the value of the home.
- [20] With regard to Mr. and Ms. Romanchuk's adult son, Jordan, as noted he has physical and mental limitations and is not able to live independently. Mr. Romanchuk supports him and helps him with his activities of daily living and planning his schedule. Having said that, Jordan is relatively high functioning and, by all accounts, appears to be financially responsible and capable of earning a modest income working at Walmart.
- [21] The financial disclosure with respect to Jordan is less than complete, but it did come out in evidence that he works about 24 hours per week, earning slightly in excess of \$21,000 per year, and he has his own savings of approximately \$80,000. He lives a relatively frugal lifestyle, staying at home with Mr. Romanchuk and not having to pay rent, as a result of which he has been able to save the money that he makes at work, which is probably a good thing, because there may well come a time when Mr. Romanchuk can no longer look after him.
- [22] With regard to the state of the family home, Mr. Romanchuk gave evidence that since separation he has spent some \$40,000 to \$50,000 on essential home maintenance and renovations. Mr. Romanchuk was extremely dilatory in providing document disclosure in this case, including copies of the relevant receipts and invoices for expenditures on the home, but in the end Ms. Romanchuk, through her counsel, quite reasonably conceded that Mr. Romanchuk is entitled to credit for \$40,000 in expenditures on post-separation home maintenance and renovations.

- [23] As of the date of separation, the family home was worth somewhere between \$366,000 and \$403,000, and the net equity, after accounting for the mortgage, was somewhere between \$94,000 and \$131,000. These are only rough figures because, as far as I can tell, there is no admissible property appraisal for 2015. As of 2015, the property had an assessed value of \$665,000 and the net equity was somewhere around \$465,000. As of the trial date, the property's appraised value is \$770,000 and the net equity after accounting for the mortgage is \$613,000.
- [24] The parties also had a number of family debts as of the date of separation. Ms. Romanchuk assumed responsibility for one of them and Mr. Romanchuk assumed responsibility for the others. I am not going to go through the numbers because, in the end, the bottom line adjustment is not in dispute and is not a controversial subject between the parties.
- [25] I should say that in closing argument, Mr. Romanchuk sought to put in issue two additional credit card debts that he says Ms. Romanchuk incurred after separation and for which he has had to assume responsibility. However, Mr. Romanchuk did not produce the documents relating to these debts prior to trial, with the result that Ms. Romanchuk was not given an opportunity to address them in her trial testimony. I explained to Mr. Romanchuk that if he wanted to pursue these two debts, he would have to apply to reopen the trial, and Ms. Romanchuk would have to be recalled, which could well lead to an adjournment if he chose to pursue it. Mr. Romanchuk indicated that, in view of the history of the case, his interest was in wrapping the matter up and not in prolonging it any further, so he did not make a request to reopen.
- [26] With regard to Mr. Romanchuk's income, this is relevant, of course, to determining the quantum of spousal support, assuming entitlement is made out. During his trial testimony, Mr. Romanchuk was under the impression that his spousal support obligation to Ms. Romanchuk was determined by reference to his T4 employment income, but I explained to Mr. Romanchuk that for a party who controls a closely-held company, Guideline income for support purposes is generally determined by the cash flow or disposable income available to that party through the business. In Mr. Romanchuk's case, that figure is substantial, because the company is now profitable and generates significant pre-tax income. I will discuss the details of the income in my analysis.
- [27] That concludes my review of the facts based on the evidence adduced at trial.

Analysis

Issue 1: Divorce

- [28] The question of divorce is not contested. I will make an order that the parties are divorced with the order to take effect on the 31st day after judgment is granted.

Issue 2: Division of Family Property and Debt

- [29] I must acknowledge a few basic rules that guide the legal analysis as to division of family property and debt. These rules for division of family property and debt are codified in Part 5 of the Family Law Act.
- [30] First, the starting point is that all property acquired during a relationship is family property. The burden is on a party claiming that property is not family property to prove that it is excluded. This rule comes from s. 84 of the Family Law Act. In this case, neither party is making any argument about excluded property, at least at this point in time. The issue was raised in the pleadings, but was not pursued at trial.
- [31] Second, the strong presumption is that all family property and family debt is to be divided equally. That comes from s. 81(b) of the Family Law Act. The only basis for departing from this rule is where one of the parties can convince the court that equal division would be significantly unfair, as contemplated in s. 95(1) of the Family Law Act. There are a list of factors governing that analysis, as set out in s. 95(2). I am not going to review those here, but I will be mindful of them in the course of my analysis.
- [32] Third, there are often disputes about how family property is to be valued. This is particularly so in the case of real property that can rise or fall in value between the date of separation and the date of trial. Section 87(b) of the Family Law Act provides that, unless the court otherwise orders, family property is to be valued at the date of trial. The intent is for each party to share equally in any growth in property value up to the point that it is divided between them. Now, the court has the discretion to pick a different valuation date, but the case law now recognizes that a party asking the court to use a different date must show that the valuation of the property as of the date of trial would result in significant unfairness, which is the same test applied when considering unequal division of family property.
- [33] Fourthly, to summarize the discussion of these legal principles on property and debt division, any departure from the general rules of (a) equal division and (b) valuation as of the date of trial can only be justified where those general rules would result in significant unfairness. As I say, there are a number of factors relevant to significant unfairness as set out in the statute.
- [34] Fifth and finally, the courts have said that in order to decide whether equal division of family property based on its value as of the trial date would be significantly unfair, a necessary first step is to determine what equal division based on the current value would look like. It is only then that the court can properly assess whether this result would be significantly unfair. In other words, one must first determine what the result would be based on an equal division, and then determine whether that result would be significantly unfair.
- [35] On that approach, applying the two basic presumptions of equal division and valuation as of the date of trial:

- a) The net equity in the family home is \$613,117. Each party's share would be \$306,558. Against this amount, Mr. Romanchuk is entitled to the following credits: (i) \$11,238.31 on account of a judgment registered against Ms. Romanchuk's share in the property; (ii) \$20,000 on account of Ms. Romanchuk's share of the home maintenance and renovation costs; and (iii) \$2,975 on account of Ms. Romanchuk's withdrawal of funds from a TD Trust account at or after separation. In the result, Mr. Romanchuk's share of the family property is worth \$340,772, and Ms. Romanchuk's share is worth \$272,345.
- b) With respect to family debt, Ms. Romanchuk assumed responsibility for the Canadian Tire MasterCard amount of \$13,500, and Mr. Romanchuk assumed responsibility for the remainder of the debt totalling \$42,557. The difference between these two figures is \$29,057, and Mr. Romanchuk is entitled to credit for half of that amount which is \$14,528.50.
- c) JAKKS Holdings Ltd. has an appraised value of between \$350,000 and \$410,000. This figure takes into account market forces and risks, and the company's current financial situation, including its outstanding assets and liabilities, and in particular including a substantial CRA debt which may be reduced on appeal, if the appeal is successful. This figure also accounts for a spike in revenues due to COVID-19 cleaning contracts, which will obviously not continue into the future. The appraiser took that into account. I consider the appraisal to be reasonable and balanced. I am not able to make a better assessment and I would put the value of the business at \$380,000, which is halfway in between the high value and the low value. Dividing that equally, each party's share would be worth \$190,000.
- [36] In the result, an equal division of family property, based on value at the date of the trial, would produce the following outcome, and here I have got a table which sets out each party's situation, but basically if you look at Ms. Romanchuk, her interest in the family home would be worth \$306,558, and from that there would have to be adjustments regarding the home of \$34,213, and family debt of \$14,528.50, and then Ms. Romanchuk's share of the business would be worth \$190,000, and in the net result, the total would be \$447,806.50.
- [37] On an equal division of all family property based on its value at the time of trial, Mr. Romanchuk would have to make a compensation payment to Ms. Romanchuk in the amount of \$447,806.50 in order to retain both the family home and the business. Mr. Romanchuk says this would be significantly unfair to him. As I understand it, Mr. Romanchuk advances two main arguments in support of his position on significant unfairness. One is the passage of time and its impact on both the value of the home and the business. The other is the circumstances surrounding the increase in the value of the business and in particular his role in running the business, making it more profitable and therefore increasing its value without any assistance from Ms. Romanchuk.
- [38] With regard to the passage of time, Mr. Romanchuk emphasizes that the parties separated in 2015 and the family law proceedings have been going on for some eight years now. He says that if the case had been resolved early on, he would have been in a position to pay out Ms. Romanchuk's interest in both the home and the business, so that he could retain both. He

would not have to sell the home and relocate, which has implications for both himself and for his son, and he would not have to sell the business. By contrast, valuing the family property at the date of trial, both the family home and the business have increased in value so much that he would be unable to pay out Ms. Romanchuk's interest in either one without having to sell the home and quite possibly sell the business as well. He says that all of this would be significantly unfair to him. He says he was trying to settle the case, but no settlement could be reached and Ms. Romanchuk should not benefit from the passage of time to his detriment.

- [39] One of the difficulties I have with Mr. Romanchuk's approach to this issue of the passage of time is that it is not a case where one can say the passage of time since the date of separation is something that rests entirely or even principally at the feet of Ms. Romanchuk. The fact is the family law case went on for a number of years, but I cannot say on the record before me that it was Ms. Romanchuk's fault or the product of Ms. Romanchuk's conduct. Both parties had counsel for much of the time and, while there were discussions about settlement, they obviously never led to a resolution. I cannot lay that at the feet of Ms. Romanchuk. It is clear based on the evidence presented at trial that a certain portion of the delay is actually attributable to Mr. Romanchuk, either by being unready to proceed to trial and resulting in an adjournment, or by failing to take necessary steps to obtain a business valuation. It is clear to me that the evidence with respect to the value of the business is and probably always was or has been a key issue in the case. So, on an objective view of the evidence, this is not a case where Mr. Romanchuk can say that the passage of time from separation to trial is clearly the responsibility of the other party.
- [40] Another difficulty I have with Mr. Romanchuk's approach to the issue of the passage of time is the manner in which the passage of time has impacted on the value of the family property in issue. With respect to the former family residence, it is true that the property has increased in value significantly since the separation date. Based on the evidence, it would appear that the increase is attributable to two factors.
- [41] One factor is market forces in relation to real estate. That is certainly not something that Mr. Romanchuk can take credit for, as the increase due to market forces was not the product of any particular effort or labour on his part. At first blush, Ms. Romanchuk is entitled to benefit from the increase in value of the family property due to market forces as much as Mr. Romanchuk is.
- [42] The other factor is that the mortgage has been paid down somewhat since the initial date of separation. At separation, it was around \$300,000 and now it is below \$160,000. However, while Mr. Romanchuk was solely responsible for paying the mortgage from the date of separation onward, he has also had the benefit of living in the property without having to pay rent. Tendered in evidence is a real estate report showing what market rent would be for a comparable residence in Vernon. When one takes this into account, the case for saying that Mr. Romanchuk should be entitled to any special consideration or credit for paying down the mortgage is not particularly strong.

- [43] Now, the other aspect of Mr. Romanchuk's significant unfairness argument is, in my view, more compelling. Mr. Romanchuk says that the increase in value of JAKKS is attributable more or less entirely to his efforts. Even prior to separation, he ran the business without any real contribution from Ms. Romanchuk. I would say that point is not all that relevant, because during the relationship the parties had an arrangement or a family situation in which Mr. Romanchuk was the primary income earner and Ms. Romanchuk did not earn outside the home, and certainly Ms. Romanchuk was one of the original investors and shareholders in the business from its inception. As a general rule, relative contribution to family property during a relationship is not a factor that can be used to justify a finding of significant unfairness. However, in this particular case, the evidence is clear that as of the date of separation, the company had a minimal market value. Since separation, the company's value has increased substantially. This is not a case where the increase in the company's value is attributable to passive growth in the value of assets such as real estate holdings. On my assessment of the evidence, the increase in value is attributable more or less entirely to Mr. Romanchuk's efforts and to his success in improving the company's profitability between 2015 and 2023. There have been ups and downs in the business, but what is clear to me from the appraisal report and from the viva voce testimony of Mr. Sanders is that the company's increase in value is a function of increase in profitability. Both business valuations methods employed by Mr. Sanders, which are commonly accepted methods in his field of expertise, are based on the company's income generation history and future earnings potential. In my view, all of this is attributable to Mr. Romanchuk's efforts with no assistance from Ms. Romanchuk.
- [44] For her part, Ms. Romanchuk, through her counsel, tacitly accepts that there may be some basis for an adjustment to the valuation of the company based on the active and exclusive role that Mr. Romanchuk has played in the company since separation. However, counsel submits that Ms. Romanchuk should still be entitled to a substantial share in the increase in value of the company, because the company is, after all, family property and because Ms. Romanchuk is one of the two shareholders of this closely-held company. As the company has increased in value and now has substantial market value, Ms. Romanchuk should be entitled to a fair share of that market value. Counsel points out that the company now has rather significant cash reserves and Mr. Romanchuk is in a position to access the cash on hand, which he could use to buy out Ms. Romanchuk's interest, either in whole or in part.
- [45] I have considered Ms. Romanchuk's argument about cash reserves, but I do not find it convincing for three reasons. First, the company's cash reserves were certainly something that Mr. Sanders was aware of when he did his business valuation, and that information is taken into account and, in effect, baked into the ultimate business valuation. To a certain extent, focus on individual components of the company's balance sheet as a means of valuing the company or assessing the fairness of the valuation is like mixing apples and oranges. Second, while there are cash reserves on hand, there are also liabilities, including a potential tax debt which is a topic of some uncertainty. It is not easy to say whether Mr. Romanchuk would have access to the full amount of the company's cash reserves to pay out

Ms. Romanchuk's interests. Third, the issue of Mr. Romanchuk's ability to get funds to pay a compensation order is not directly relevant to the valuation of the company itself. The means by which Mr. Romanchuk might pay a compensation order, for example by accessing the company's cash reserves, is a question of process, not a substantive issue going to the fairness of the valuation.

- [46] Ms. Romanchuk's counsel also points out that the shareholder's loan has been paid down significantly, which means that Ms. Romanchuk's share of the shareholder's loan has been going down or reduced without any personal benefit to her. I think that is a fair point, but I view it as a somewhat separate issue from the valuation of the company and I will deal with this point in more detail later in the reasons.
- [47] I appreciate that the standard that has to be met to justify a departure from the normal rule of equal division based on value at the trial date is significant unfairness. This is a high hurdle. Another question to ask is if the threshold of significant unfairness is met, how would it be remedied or addressed? The law is clear that the remedy cannot overshoot the mark.
- [48] Mr. Romanchuk argues that the way to address the significant unfairness to him would be to use a different valuation date for both the family home and the family business. If one were to use the date of separation as the valuation date, Ms. Romanchuk's share of the home would be worth somewhere between \$47,000 and \$66,000. On this approach, Mr. Romanchuk would not be entitled to any credit for post-separation renovations or maintenance, but he would still arguably be entitled to credit for \$28,741.50 in adjustments on account of debts. Thus, using the date of separation as the valuation date, Ms. Romanchuk's interest in the family home would be worth somewhere between \$18,000 and \$37,000.
- [49] With respect to the business, in 2015, the company had basically no value. However, it seems to me that if one were going to use the date of separation as the valuation date then, at the very least, it would be necessary to take into account Ms. Romanchuk's interest in the shareholder loan account at the date of separation. The outstanding shareholder loan balance at the time was \$163,000. If one were to use that figure alone, Ms. Romanchuk's share would be worth \$81,500.
- [50] However, in my view, that is not the right figure to use for the following reason. The company's value at the date of separation was basically zero. If the company were sold as a going concern, no one would pay anything for it at that time. Also, the company's assets were not worth enough to cover the entire shareholder loan balances, so if the company were wound up, the company would not have been able to pay the shareholder loans in their entirety. The company's assets at the time were worth \$75,000 to \$85,000. The median figure would be \$80,000. If the company were wound up and the assets liquidated, this would be how much was available to pay off the shareholder loans. Of this, each party would be entitled to half or \$40,000.

- [51] Thus, if one were going to use the date of separation as the valuation date for both the home and the business, then Ms. Romanchuk would be entitled to a compensation payment of somewhere between \$58,000 and \$77,000, depending on the value of the home.
- [52] In my view, even if equal division based on the value of the family property at the date of the trial was significantly unfair to Mr. Romanchuk, the remedy of valuing both the family home and the business as of the date of separation would grossly overshoot the mark. It would mean that Ms. Romanchuk would walk away from a 25-year relationship with, at most, \$77,000, while Mr. Romanchuk would retain property with a current value of over one million dollars, including a business which is presently generating substantial income.
- [53] As an alternative or middle ground to that approach, Mr. Romanchuk asks the court to consider using some other valuation date, perhaps 2017 or even 2021. There are some difficulties with this approach based on the evidence. For example, if one were to use 2017, there is no appraisal for the family home and no business valuation as of that date. One would have to be selective or pick through the numbers that are available to make an assessment, and it would not be a particularly accurate one. For 2021, there is a property appraisal of the home, but again no reliable way to value the business. I think the gaps in the evidence make it difficult for me to select some middle-ground valuation date without using property valuations that would be somewhat arbitrary and certainly not grounded in evidence.
- [54] Having gone through these considerations, my conclusions are as follows.
- [55] First, I do not find that it is significantly unfair to Mr. Romanchuk to value the former family home as of the trial date. The increase in the home's value is attributable principally to market forces and Ms. Romanchuk is just as much entitled to share in that increase in value as Mr. Romanchuk. Certainly, the high threshold of significant unfairness has not been met.
- [56] Second, I do find that it would be significantly unfair to Mr. Romanchuk to value the business as of the date of trial. I find that the increase in the value of the business from 2015 to 2023 is attributable exclusively to Mr. Romanchuk's management and sound operation of the company. The business had no real market value when the parties separated in 2015, and since then profitability has increased due significantly to the efforts of Mr. Romanchuk in running the company and in securing more profitable contracts or pursuing more profitable contract arrangements. Ms. Romanchuk did not have any role whatsoever in the business over this timeframe, and I find that it would be significantly unfair for her to benefit in the corresponding increase in value. I have considered all of the statutory factors in s. 95(2), but I rely in particular on subsection (2)(f) to support this conclusion.
- [57] I also take into account the unfairness that could arise if Mr. Romanchuk were forced to sell the company to pay out Ms. Romanchuk's interest based on its value as of the trial date. I find it quite unlikely that Mr. Romanchuk would be able to retain the business if he were required to come up with a compensation payment in the order of \$447,806 to buy out Ms. Romanchuk's interest in both the home and the business. If he were forced to sell the

company under a timeline that is not under his control, there is a risk that he might not be able to realize its actual market value. It could end up being in the nature of a fire sale. Further, if Mr. Romanchuk were forced to sell the business, depending on how he did so, it could seriously affect his income-earning potential going forward. That would be to Mr. Romanchuk's detriment, but also to Ms. Romanchuk's potential detriment in terms of her interest in continued spousal support. I consider all of these risks associated with the possible need to sell the business together as relevant factors or a relevant factor in the significant unfairness analysis, pursuant to s. 95(2)(i) of the FLA.

- [58] In my view, the proper remedy for the significant unfairness in this case is to value the former family home as of the date of trial, and to value the business as of the separation date. This approach is authorized by the combined effect of s. 87 and s. 95 of the FLA.
- [59] With regard to the family home, the equity available is \$613,000. After making the necessary adjustments for renovations and equalizations of family debt, Ms. Romanchuk's share comes out to \$257,806.50.
- [60] With regard to the business, as noted, the market value of the company as of the date of separation was zero. However, as discussed above, it is necessary to take into account the status of the shareholder loan. In 2015, the shareholder loan balance was \$163,000, but the company did not have the ability to pay out the entire loan based on its assets as of 2015. Basically, the company's break-up value or winding-up value to the shareholders at the time of separation was \$80,000. I find that Ms. Romanchuk is entitled to half of that amount or \$40,000.
- [61] So my conclusion is that in order for Mr. Romanchuk to retain both the family home and the family business, he is required to make a compensation payment to Ms. Romanchuk in the amount of \$297,806.50. I would give Mr. Romanchuk 60 days from the date of this judgment to make the necessary financing arrangements. If he is unable to do so, then the family home is to be listed for sale and from the net proceeds, \$297,806.50 is to be paid out to Ms. Romanchuk and Mr. Romanchuk is to retain the balance. If other details must be addressed in the order, the parties can raise those with the Court at the conclusion of the reasons.

Issue 3: Child Support

- [62] The facts establish that at present Jordan, who is 29, has disabilities and is thus unable to withdraw from the charge of his parents. He lives with Mr. Romanchuk and I find that he is a dependant child within the meaning of s. 2 of the Divorce Act. However, for support purposes, considering Jordan's needs and his ability to earn a relatively modest income on his own, and his ability to save funds over time, and also in light of the extremely deficient financial disclosure, I find that Jordan is able to basically support himself while living under Mr. Romanchuk's care in the former family home. I would therefore rely on s. 3(2)(b) of the Child Support Guidelines to conclude that Ms. Romanchuk's support obligation is zero dollars per month at this point in time.

Issue 4: Spousal Support

- [63] There are two stages in the spousal support analysis. The first stage is the question of entitlement to support. If the Court determines that there is an entitlement to support, the second stage is the determination of quantum of support.
- [64] Spousal support is dealt with under s. 15.2 of the Divorce Act. Under s. 15.2(3), the court is required to take into account the condition, means, needs, and other circumstances of each spouse, including the length of their cohabitation and the functions performed by each of them, and any agreement or order regarding support. The objectives of spousal support as set out in s. 15.2(6) are:
- a) the recognition of any economic advantage or disadvantages to the spouse arising from the marriage or its breakdown;
 - b) the apportionment of the financial consequences pertaining to the care of the children over and above each spousal support obligation;
 - c) relief of economic hardship arising from the breakdown of the marriage; and
 - d) insofar as it is possible, promoting the economic self-sufficiency of each spouse within a reasonable period of time.
- [65] In *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420, the Court stated at paragraph 49 that, "[i]n summary, the statutes and the case law suggest three conceptual bases for entitlement to spousal support: (1) compensatory, (2) contractual, and (3) non-compensatory." In the present case, the issue of contractual support does not arise. What is in issue here are the compensatory model and the non-compensatory or needs-based model of spousal support.
- [66] Compensatory support is "intended to provide redress to the recipient spouse for economic disadvantage arising from the marriage or the conferral of an economic advantage upon the other spouse": see *Chutter v. Chutter*, 2008 BCCA 507 at paragraph 50. The compensatory model of spousal support often focuses on economic disadvantages from "sacrifices made by a recipient spouse in assuming primary childcare and household responsibilities": see *Chutter* at paragraph 50. However, compensatory support may also address economic advantages enjoyed by one spouse as a result of the other spouse's efforts: see *Chutter* at paragraph 51, citing *Moge v. Moge*, [1992] 3 S.C.R. 813 at page 864.
- [67] The non-compensatory approach to spousal support is related to the factors in s. 15.2(6)(c) and (d). These factors are: to relieve any economic hardship of the spouse arising from the breakdown of the marriage and, so far as is practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time. Basically, need alone may establish an entitlement to compensatory support. The concept of need, however, goes beyond the basic necessities of life and varies with the circumstances of the parties. The same is true for self-sufficiency. In longer marriages, self-sufficiency and need are measured against the marital standard of living or the payor's post-separation standard of living.

- [68] When I consider the nature and history of the relationship between the parties in this case, I find the claim to compensatory support is not particularly strong, but that the case for non-compensatory support is more compelling. This was a relationship of some 25 years in duration. From a compensatory perspective, Ms. Romanchuk is the mother of two children of the marriage and she obviously had a part in raising them, which I am sure affected her ability to earn her own income or become financially self-sufficient. Also, Ms. Romanchuk contributed financially towards the startup of the first business, Joey's Only, and as I understand it, the parties used their resources from that restaurant to acquire or start up the janitorial business.
- [69] Turning to the non-compensatory or needs-based analysis, the fact is that this was a 25-year relationship where, particularly over the final 15 years or so, Ms. Romanchuk was financially dependent upon Mr. Romanchuk to maintain her standard of living. She has serious health problems and a substance abuse problem, and is clearly not now in a position to become self-sufficient. Even accounting for the property division, Ms. Romanchuk is in need of ongoing financial support.
- [70] I conclude that Ms. Romanchuk has satisfied the test for establishing an ongoing basis for spousal support, particularly on the basis of continuing economic dependence and financial need. Under the Spousal Support Advisory Guidelines, the duration of Ms. Romanchuk's entitlement is indefinite given the length of the relationship under the with-child model. I will say with regard to the duration of support that Mr. Romanchuk should have a right of review of the support, both as to duration and quantum, upon his retirement.
- [71] That brings me to the issue of quantum of support. For a party who controls a closely-held company, Guideline income is determined under s. 18 of the Child Support Guidelines. There are two alternate approaches for determining Guideline income for the principal of a closely-held company under s. 18.
- [72] Approach number one, per s. 18(1)(a), is based on the company's pre-tax income. On this approach, the average pre-tax income of JAKKS over the past three years is \$120,000, but to this one must add other remuneration paid to Mr. Romanchuk as a non-arm's-length employee per s. 18(2) of the Child Support Guidelines. Using a three-year average, the result is a Guideline income of \$168,000 per year.
- [73] Approach number two, per s. 18(1)(b) of the Child Support Guidelines, is to use an amount that is "commensurate with the services that the spouse provides to the company". To my way of thinking, this is basically the management fee that an arm's length company would pay Mr. Romanchuk annually to run the company. This figure is what Mr. Sanders referred to in his report as the economic management remuneration figure, which Mr. Sanders put at \$88,000 per year.
- [74] I take into account that the company Mr. Romanchuk controls is a closely-held small business with a relatively volatile income stream. I also take into account that while the company has, on paper, made a fair bit of profit in the past several years, much of that has

been left on the company books or plowed into the business. It is true that as the business owner, Mr. Romanchuk is the ultimate beneficiary of the company's improved financial position, but the financial health of the company is also a concern in terms of maintaining the option of being able to sell the business at some point. Mr. Romanchuk is already 65 and might reasonably choose to retire from active involvement in the business at some point in the not-too-distant future.

- [75] Taking all of this into account, I would rely on s. 18(1)(b) of the Guidelines to determine Mr. Romanchuk's Guideline income. I would use what Mr. Sanders referred to as the economic management remuneration figure to set Mr. Romanchuk's Guideline income at \$88,000 per year.
- [76] Now, based on that income and the duration of the relationship and the ages of the parties, and using the with-child formula, the Spousal Support Advisory Guidelines actually indicate that Mr. Romanchuk would be required to pay support at a higher level than he is currently paying. However, Ms. Romanchuk, through her counsel, has quite fairly and reasonably taken the position that Mr. Romanchuk should continue to pay support at the rate of \$1,950 per month. That position is appropriate, in my view, considering the nature of Ms. Romanchuk's spousal support claim, the age of the parties, and the fact that Mr. Romanchuk will have to make a substantial compensation payment to Ms. Romanchuk in order to address the property division issue, and the fact that Ms. Romanchuk has also received an inheritance. To be clear, the inheritance is separate and apart from the family law proceedings, but it still impacts Ms. Romanchuk's overall financial position and need.
- [77] So, I accede to the suggestion of counsel as to the quantum of support, and I order that Mr. Romanchuk is to continue to pay support in the amount of \$1,950 per month on an indefinite basis, but that Mr. Romanchuk has a right of review as to both duration and quantum when he retires from active involvement in the business, in whatever form that retirement may take. I am prepared to take it at face value that Mr. Romanchuk has an interest in keeping the business running and continuing to maximize its value, to the point where he can ensure a proper succession or transition of the business into the hands of someone else.

Summary and Conclusion

- [78] To conclude and summarize the result, I would make an order with the following terms, and here, Madam Clerk, I have eight terms and they are a bit wordy, nine terms, and I can email them to you after court, okay.
- (1) The parties are divorced. The language there would have to be expanded upon, but counsel can do that.

- (2) Subject to terms 5 and 6 below, Mr. Romanchuk will retain ownership of the former family residence at 11306 Priest Valley Drive, Coldstream. Ms. Romanchuk is ordered to execute whatever documents are necessary to sign over her interest in the property to Mr. Romanchuk.
- (3) Subject to terms 5 and 6 below, Mr. Romanchuk will retain ownership of JAKKS Holdings Ltd. ("JAKKS"). Ms. Romanchuk is ordered to execute whatever documents are necessary to sign over her interest in JAKKS to Mr. Romanchuk.
- (4) To the extent that the outstanding debts are not already dealt with and extinguished, Ms. Romanchuk will be responsible for the Canadian Tire Mastercard debt, and Mr. Romanchuk will be responsible for all other debts. Neither party is to incur any further debt in the other party's name, or jointly with the other party, subject only to any refinancing of the mortgage on the Priest Valley Drive property as may be required for Mr. Romanchuk to make the compensation payment referred to in Terms 5 and 6.
- (5) Mr. Romanchuk is required to make a compensation payment to Ms. Romanchuk in the total amount of \$297,806.50 in settlement of Ms. Romanchuk's interest in the Priest Valley Drive property per Term 2 above, and JAKKS per Term 3 above. Mr. Romanchuk is to pay this amount within the time period set out in Term 6.
- (6) Mr. Romanchuk is to have 60 days from the date this judgment to pay the compensation amount to Ms. Romanchuk. If Mr. Romanchuk is unable to make the payment within that timeframe, or within any extension period agreed to in writing by the parties, then the Priest Valley Drive property is to be listed for sale, with the parties having joint conduct of sale, subject to further order of the court. The sale of the property will be subject to approval by the court, unless both parties waive this requirement in writing. Any offers that are entertained must be accepted subject to court approval for the sale, unless both parties waive this requirement in writing. From the net proceeds of the sale, the first \$297,806.50, plus interest commencing 60 days from the date of judgment, is to be paid to Ms. Romanchuk, and the balance is to be paid to Mr. Romanchuk.
- (7) Pursuant to s. 2 and 15.1 of the Divorce Act, Jordan Romanchuk - and here Jordan's date of birth will have to be inserted - is determined to be a child of the marriage under the current care of Mr. Romanchuk. Ms. Romanchuk's obligation to pay child support is fixed at \$0 per month, pursuant to s. 15.1 of the Divorce Act and s. 3(2)(b) of the Child Support Guidelines.
- (8) Pursuant to s. 15.2(1) of the Divorce Act, Ms. Romanchuk has an entitlement to spousal support on an indefinite basis, subject to review as to both duration and quantum as provided for in term 9 below. Mr. Romanchuk shall pay Ms. Romanchuk spousal support in the amount of \$1,950 per month, due on the first day of each month, until further order of the Court.

[9] Mr. Romanchuk will have a right of review of his spousal support, as to both duration and quantum, upon retirement from his active role in the business. This is in addition to the right to seek variation based on any other material change in circumstance per s. 17 of the Divorce Act.

[79] Those would be the terms, subject to any input or comment by the parties. That is a lot to digest, counsel, but have you got any concerns about the terms that I have specified?

[Submissions on costs. Claimant's counsel suggests each party bear their own costs. Respondent does not disagree.]

[80] THE COURT: Thank you, Mr. Vlahos, each party will bear their own costs. I can make that term (10), so that it is clear.

[Submissions on dispensing with the requirement for the Respondent's signature on the order. Claimant's counsel suggests that is appropriate, and Respondent is not opposed].

[81] THE COURT: Term (11) will be that the requirement for Mr. Romanchuk to endorse the form of the order is dispensed with on the condition that once the entered order is obtained, counsel will email a copy to Mr. Romanchuk for his records.

[82] Again, that is a lot to digest. I will just ask Mr. Romanchuk, is there any need to clarify any of these terms on your behalf?

[83] D. ROMANCHUK: Just one thing, Justice. I know that there's a line - or a judgment on the house as a lien, and I don't know if that was addressed, who pays for that or how that gets reduced or off the - off the house. For me to get financing off the house, the financier, the new mortgage company, whatever, will have to know how that is going to be settled.

[84] THE COURT: So the lien, the amount with respect to the lien was addressed in the judgment. Correct, Mr. Vlahos?

[85] CNSL N. VLAHOS: That's correct.

[86] THE COURT: Right. So, if you need to pay off the lien or otherwise deal with it in order to properly list the house, that is going to be your responsibility. Because in the end, if you are able to acquire the house, it is going to become your asset, and the financial impact of having to pay off the lien is already addressed in my ruling.

[87] D. ROMANCHUK: Okay.

[88] THE COURT: Okay, so it is going to be, in the end, on this arrangement, your responsibility and the bottom-line dollar figure is the number that I gave in my judgment.

[89] D. ROMANCHUK: Okay.

[90] THE COURT: All right. So thank you very much. Mr. Vlahos, thank you for your assistance in bringing this case through the trial process in an orderly way, and in dealing with some late-breaking documents and what have you. And Mr. Romanchuk, thank you for being polite and respectful during the court proceedings. Okay. Thank you.

"Riley J."

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