

CANADA / JUDGMENT

## Savost'Yanova v. Chui

2015 BCSC 516

### COURT

Supreme Court of British Columbia

### DECIDED

8 April 2015

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2015 BCSC 516 Savost'Yanova v. Chui

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Savost'Yanova v. Chui,

2015 BCSC 516

Date: 20150408

Docket: E041542

Registry: New Westminster

Between:

Ksenia Savost'Yanova

Claimant

And

Kenneth Chui

Respondent

- and -

Docket: S157276

Registry: New Westminster

Between:

Grace Chui and Lawrence Chui

Plaintiffs

And

Kenneth Chui and Ksenia Savost'Yanova

Defendants

Before: The Honourable Mr. Justice G.C. Weatherill

Reasons for Judgment

Appearing on her own behalf:

Ksenia Savost'Yanova

Counsel for Kenneth Chui:

M. Ramage

Counsel for Grace Chui and Lawrence Chui:

R. Swartzberg

Place and Dates of Trial:

New Westminster, B.C.

March 2-6, 9, 2015

Place and Date of Judgment:

New Westminster, B.C.

April 8, 2015

## I. Introduction

[1] These two related proceedings were tried together. The first is a family action in which the parties claim and counterclaim against each other in respect of:

- a) a divorce;
- b) retroactive and ongoing child support;
- c) retroactive and ongoing spousal support;
- d) the claimant's income tax liability; and
- e) the division of family assets.

[2] The second action is a debt claim by Grace Chui and Lawrence Chui, the parents of the respondent, Kenneth Chui, against him and Ksenia Savost'Yanova in respect of loans allegedly made by the parents over the course of the parties' marriage.

- [3] I will refer to the litigants in the family action collectively as "the parties" and individually as the claimant and the respondent, respectively. I will refer to the litigants in the debt action as the plaintiffs, the respondent and the claimant, respectively. I will refer to the individual plaintiffs in the debt action as Mrs. Chui and Mr. Chui, respectively.

## II. Background

### A. The Bank of Dad

- [4] Mr. and Mrs. Chui have three sons, Samson, Patrick and the respondent. Mr. Chui is a fastidious, exact and detailed person, particularly when it comes to money. As a parent, he determined to teach his sons, from a very young age, about financial responsibility, the meaning of money and the importance of savings. He instilled in them the concept that, if they wanted something, they would have to earn it first.
- [5] For each of his sons, Mr. Chui maintained a handwritten "Bank Book" in which he recorded credits for chores performed, respectable marks achieved and good behaviour. The child was entitled to redeem the credits to purchase items provided he had sufficient credits in his Bank Book.
- [6] In addition to the Bank Book, Mr. and Mrs. Chui maintained for each of his sons a detailed, to the penny, ledger of all transactions recorded in their sons' respective Bank Book accounts. I will refer to the ledger in respect of the respondent's transactions as the "Ledger".
- [7] Mr. Chui updated each Bank Book and the Ledger contemporaneously with each credit (deposit) and debit (withdrawal).
- [8] The three sons referred to this accounting arrangement as the "Bank of Dad". In essence, Mr. and Mrs. Chui operated as a private banker for their sons. Interest was paid by the plaintiffs on any credit balances. Interest was charged on any debit balances. In both instances, the interest rate used was the rate charged to Mr. Chui by his bank which, for debit balances, was the bank's prime rate. There was no date by which the plaintiffs required repayment of any debit balances.
- [9] At the end of each month, usually after a family dinner, Mr. Chui presented to his three sons an updated ledger showing all transactions that had been recorded against each of their respective lines of credit since the last update. He did so to give them an opportunity to dispute any of the items that were recorded. Not surprisingly, given Mr. Chui's precision, there was never any dispute.
- [10] I will refer to this banking arrangement between the plaintiffs and the respondent as the "Bank of Dad" or the "Line of Credit".

**B. Kenneth and Ksenia**

- [11] The claimant is currently 31 years of age. The respondent is 36. They first made contact through a dating website in 2001 when the claimant was aged 17 and was living in Russia. The respondent was aged 22 and was living in Edmonton, Alberta.
- [12] The parties' long-distance relationship carried on until early 2004. During that time the claimant was attending university in Russia pursuing a degree in linguistics while the respondent was working as a software developer for a firm in Edmonton. The respondent made two trips to Russia to visit the claimant. The claimant travelled to Edmonton on one occasion for three months to visit the respondent.
- [13] In January 2004, the claimant travelled to Canada on a visitor's visa. She was unable to work due to her immigration status. She lived with the respondent, his two brothers and the plaintiffs in the plaintiffs' Edmonton home.
- [14] The parties were married shortly thereafter on February 21, 2004, in Edmonton, Alberta. They continued to live with the plaintiffs and the respondent's brothers in the plaintiffs' home. They paid rent of \$900 per month, which included all utilities and food.
- [15] At the time of the parties' marriage, the respondent had a credit balance in his Line of Credit of \$6,751.85.
- [16] After the parties' marriage, Mr. Chui continued to track all financial transactions involving the parties in the Ledger and in the respondent's Bank Book. In Mr. Chui's mind, the claimant and the respondent were, by virtue of their marriage, a family unit and the respondent's Line of Credit had morphed into a banking facility for both of them. Some of the entries were for purchases made of personal items for the claimant.
- [17] The respondent testified that he had discussions with the claimant, albeit occasional, about the Bank of Dad and how it worked and that she was present for and witnessed numerous after dinner ledger disclosures and discussions. He testified that the claimant showed no interest in these family financing arrangements and was content to let him deal with their finances.
- [18] The respondent's brother, Patrick, and his wife, Toni, testified that the claimant was present during many, if not most, of the after dinner ledger presentations and was privy to the conversations among the three sons and Mr. Chui as to the accuracy of the respective ledgers.
- [19] The claimant testified that, almost from the outset of her marriage, the respondent controlled their finances. She maintained that she was unaware of the Bank of Dad or any other financial arrangements between the respondent and his parents. She testified that the Line of Credit arrangement was never discussed with her and that she did not see the Ledger or the Bank Book until they were disclosed during this litigation. She denied being in attendance at any family dinners in Edmonton during which these documents were

reviewed and discussed.

- [20] Throughout their relationship, the claimant trusted the respondent to make the financial decisions on behalf of the family. He set up budgets and paid all of the bills and other family expenses. The claimant was content with this arrangement. She did not concern herself with the finances.
- [21] The claimant testified that she and the respondent had joint bank accounts and a joint credit card. She stated that the credit card balances were paid by the respondent but she did not know the source of the monies used by the respondent for these payments. She accessed only one of the parties' joint bank accounts into which the respondent deposited funds sufficient for the claimant's day-to-day financial needs. She did not access the other accounts and finances, although she acknowledged on cross-examination that she was not precluded from doing so.
- [22] To the extent the parties required financing for their living expenses, the respondent used the Bank of Dad because Mr. Chui was able to borrow funds from his bank at a lower interest rate than was available to the parties.
- [23] The claimant and the respondent purchased two vehicles. Unbeknownst to the claimant, the respondent used the Bank of Dad to pay for them. The claimant testified that the only time the respondent discussed with her that he had borrowed money from his parents was for Registered Education Savings Plan contributions for their children, a loan which he told her had been repaid soon after.
- [24] In September 2004, the respondent accepted a job offer in the Lower Mainland of British Columbia as a software developer at Trader Corporation ("Trader"). He testified that one of the main reasons he did so was to relieve the tension that had developed between the claimant and his parents. The parties moved to an apartment in Richmond, B.C. owned by Mrs. Chui's sister. The claimant was unaware that all of the rent transactions went through the Line of Credit.
- [25] The respondent did well in his new position at Trader and rapidly moved through the union positions and pay levels.
- [26] In January 2005, the claimant received her immigration visa which allowed her to work in Canada. The claimant advised me, and I accept, that her immigration visa was based upon the respondent's sponsorship of her.
- [27] The parties' first child, Nicholas, was born in June 2005. The claimant stayed at home to look after him while the respondent worked. She was Nicholas' primary caregiver. The claimant's mother travelled from Russia from time to time to assist.
- [28] In December 2005, the claimant obtained part-time employment at a clothing store.

- [29] After their move from Edmonton, Mr. Chui continued to provide to the respondent updated Ledger statements whenever the parties returned to Edmonton for visits or when Mr. Chui travelled to British Columbia to visit the parties. The claimant denies any knowledge of these updated statements.
- [30] By September 2006, the respondent had reached the top union position and pay level at Trader.
- [31] In October 2006, the parties purchased an apartment in Port Coquitlam. The purchase price was \$236,000. Mr. Chui and the respondent testified that, because the parties could not afford the entire purchase price, Mr. and Mrs. Chui agreed to purchase a 25% interest in the apartment for \$59,000. They did so by paying the deposit of \$12,000, \$27,000 in cash at the time of closing of the purchase and \$20,000 by way of a credit to the Line of Credit. In consideration for not having to pay rent in respect of the plaintiff's 25% interest, the parties were responsible for all maintenance and other costs associated with the apartment. The respondent testified that he discussed this arrangement with the claimant and that she was aware of it.
- [32] The claimant testified that she had no knowledge that Mr. Chui had purchased a 25% interest in their apartment. Rather, the respondent told her that his parents had gifted them \$20,000 towards the purchase of the apartment. The claimant testified that she was not involved in and had no knowledge regarding how the balance of the purchase price was financed. The respondent was the only person whose name was on the title. This was done to take advantage of the first-time home buyer plan that allowed the respondent to withdraw funds from his RRSP to fund part of the required purchase price.
- [33] In September 2007, the parties' second child, Daneal, was born. The claimant stayed at home and provided the primary child care for the children while the respondent worked. Again, the claimant's mother travelled from Russia to assist.
- [34] In November 2008, the respondent accepted an independent contractor software support position at Pacific Blue Cross. On the advice of others, including his accountant, he incorporated a company called picoMatch Solutions Inc. ("picoMatch"), the shareholders of which were the respondent (50 Class A voting shares) and the claimant (50 Class B non-voting shares). The fiscal year-end for picoMatch was May 31. He contracted his computer development services through picoMatch, initially exclusively to Blue Cross and, after four months, exclusively to Trader.
- [35] Between 2009 and 2013, the respondent derived all of his income from picoMatch.
- [36] The respondent financed a significant portion of the parties' living expenses by way of shareholder's loans from picoMatch. All of the shareholder's loan cheques were deposited into the parties' joint bank accounts. Prior to the end of each fiscal year, picoMatch paid dividends to each of the parties in an amount equal to their respective shareholder's loans. The dividends attracted income tax at a more favourable rate than would have been the case

had the money been received by way of salary. The dividend monies were deposited in the parties' joint accounts and used for family purposes. Until the parties separated, the respondent paid the resulting tax liability for both he and the claimant.

- [37] In January 2009, the parties sold the Port Coquitlam apartment because of issues they were having with a neighbour. The selling price was \$225,000, which was \$11,000 less than the price they had paid more than two years earlier. Mr. Chui testified that, at the request of the parties, the plaintiffs' 25% share of the proceeds of sale net of selling expenses, being \$53,500, was loaned to the parties together with a further \$60,000 to allow them to purchase a house in Port Coquitlam, the matrimonial home, for \$545,000 (the "matrimonial home"). The respondent confirmed this evidence.
- [38] In order for the parties to qualify for mortgage financing for the purchase of the matrimonial home, Mr. and Mrs. Chui signed a letter, drafted by the respondent, indicating that the \$60,000 they provided towards the purchase price was not a loan but rather a gift by them to the parties ("Gift Letter"). Mr. Chui testified that, without the Gift Letter, the parties would have had to purchase mortgage insurance, which was expensive. He and the respondent testified that, despite what had been represented in the Gift Letter, the \$60,000 advance was always intended and understood to be a loan.
- [39] The claimant testified that she knew nothing of any of this. Rather, she testified that the respondent told her that his parents had gifted an additional \$25,000 to them for the purchase of the house. As had been the case with the apartment purchase, the claimant had no knowledge of how the balance of the purchase price was financed other than she knew there was mortgage financing. She testified that she had no knowledge of the Gift Letter until it was produced during this litigation.
- [40] In early 2010, the claimant's mother again travelled from Russia and lived with the parties for approximately 10 months. She assisted in the child care, which allowed the claimant to obtain part-time employment, initially at The Gap and later at The Brick Warehouse, working in sales.
- [41] In September 2010, after the claimant's mother returned to Russia, Mr. Chui moved from Edmonton to live with the parties in their Port Coquitlam home. He too provided daycare for the parties.
- [42] In 2011, Mr. and Mrs. Chui, the parties, Samson and Patrick all went on a family trip to Asia. Mr. Chui paid for the airline tickets and hotels, but made it clear to his sons that he could not afford to incur and each of them was responsible for any other expenses incurred by them or by their wives. Mr. Chui recorded all monies he provided to his sons and their families or that he paid for on their behalf during the trip in his son's respective Ledger Bank Book.

- [43] In 2011, the claimant became aware of an opportunity at Sun Life Financial Distributors Inc. ("Sun Life") to become a financial advisor. She learned that, in order to qualify, she would have to pass a life insurance examination. She studied for and wrote the exam on no less than four occasions over a period of two years, failing to pass the exam on each of the first three occasions. The respondent was supportive of her pursuing the Sun Life opportunity and encouraged her in this endeavour.

### C. Separation of the Parties on May 12, 2012

- [44] Over time, the claimant's discretionary spending habits began to create friction between the parties. The respondent testified that he had difficulty controlling the claimant's spending. He had trouble covering their expenses with his income. He testified that all of the earnings of picoMatch had to be drawn out to meet his family's expenses. In addition, he regularly had to engage the Bank of Dad to meet the family's expenses. The respondent felt as though he was nothing more than a cash machine for the claimant. He testified that he needed to "stop the bleeding". He insisted on the need for the claimant to obtain his approval in advance before significant purchases were made. He also began to limit the amount of money that was deposited in the joint bank account that the claimant accessed.
- [45] Ultimately, the parties were unable to resolve their issues over money. They separated on May 12, 2012, although they both continued to live in the matrimonial home. The respondent cancelled the claimant's joint credit card on May 14, 2012.
- [46] By January 2013, the arrangements were changed such that the claimant exclusively occupied the upper floor of the matrimonial home and the respondent and his parents exclusively occupied its lower floor. The respondent paid for all of the expenses associated with the matrimonial home.
- [47] The claimant testified that, after their separation, she continued to work part-time at The Brick Warehouse while she studied for her insurance exam. She was given \$30 per week (approximately \$130 per month) by the respondent for gasoline for her car. In his usual precise way, this amount was determined by Mr. Chui on the basis of distances he anticipated the claimant would need to drive to and from the children's school and her work, together with the average consumption used by her vehicle. This amount was subsequently reduced by the respondent to \$97 per month. The respondent also provided, on a weekly basis, groceries for the claimant and the children.
- [48] During picoMatch's 2012 fiscal year, the claimant received dividends from picoMatch totaling \$57,000 to offset the shareholder's loans that had been allocated to her that taxation year in the same amount. The dividend monies were deposited by the respondent into the parties' joint account. The funds were used to pay for the family's expenses. The grossed-up value of the dividends for tax purposes was \$71,250. The income tax liability on the claimant's dividends, after applying dividend tax credits, was not paid by the respondent as he had previously done because of the parties' separation. That liability, which with interest

now totals \$6,729.06, remains outstanding.

- [49] On May 26, 2012, the respondent caused picoMatch to dilute the parties' shares in picoMatch by issuing 100 Class C voting shares to Mr. Chui and 100 Class D shares to Mrs. Chui. The respondent testified that he did so in response to demands by Trader's union that it reduce its utilization of self-employed contractors, particularly those like the respondent who had been working long-term as de facto employees. Shortly thereafter, the respondent caused picoMatch to pay a dividend to Mrs. Chui, the taxable amount of which was \$35,625, in order to reduce his tax burden. Mrs. Chui did not have a shareholder's loan with picoMatch. The income tax payable by Mrs. Chui in respect of this dividend was paid by the respondent. The respondent's explanation for this accounting exercise was vague.
- [50] This action was commenced on July 13, 2012.
- [51] The respondent testified that, in 2013, he took additional steps to appease Trader's union and demonstrate that he was, indeed, a self-employed contractor rather than an employee of Trader. He ceased attending Trader's offices on a regular basis. Rather, he began to work from a home office most days. In addition, in late 2013, at the respondent's request, Mrs. Chui incorporated a new company called IT Kit Ltd. ("ITK") which now contracts with Trader through an unrelated intermediary company for the respondent's services. The respondent testified that he is a mere employee of ITK and does not have an ownership interest in that company or any control over its affairs. He also testified that ITK's "head office" is the respondent's girlfriend's apartment in Richmond.
- [52] The claimant finally passed her insurance exam in January 2013 and commenced work at Sun Life in March 2013 as a self-employed financial advisor, level 0. Her income from Sun Life is based upon commissions earned when new clients are secured, as well as residuals which are paid while the client continues with Sun Life. She pays all expenses associated with this work, including rent, to Sun Life for use of its office. Upon becoming a financial advisor with Sun Life, the claimant received a \$2,000 signing bonus and a \$5,000 stipend in order to establish herself pending commissions being earned.
- [53] The claimant struggled in her new career. Her expenses exceeded her income. She was transferred from Sun Life's Vancouver office to its Abbotsford office in early 2014.
- [54] The claimant's manager at Sun Life in the Abbotsford office testified that, initially, the claimant continued to struggle after she arrived in the Abbotsford office but, more recently, has shown significant progress and potential. She is now a level 2 financial advisor, which her manager describes as a "huge leap" for the claimant. Her total income in 2014, including commissions from part-time employment with a company called Travel Underwriters, was \$21,320. He testified that, in his experience, it would be a challenge for a level 2 financial advisor to earn \$35,000 per year.

1. Previous Proceedings and Court Orders

- [55] On December 28, 2012, the parties attended a judicial case conference before Master Caldwell who made a consent order declaring there was no reasonable prospect of a reconciliation between the claimant and respondent, pursuant to s. 57 of the Family Relations Act, R.S.B.C. 1996, c. 128 [FRA].
- [56] On May 1, 2013, the parties appeared before Master Keighley on the claimant's application for, inter alia, interim spousal and child support. The respondent advised the court through his counsel that he intended to move out of the matrimonial home by June 1, 2013.
- [57] On June 6, 2013, an order was made by Master Keighley that, following the respondent's departure from the matrimonial home, he was to pay monthly child support of \$1,538 and spousal support of \$2,901 (based upon income attributable to the respondent and claimant of \$127,532 and \$0.00, respectively).
- [58] The respondent did not leave the matrimonial home on June 1, 2013, or indeed at any other time prior to its sale in November 2014. He did, however, continue to pay for all of the mortgage and other expenses relating to the matrimonial home. He also paid for the children's food, but required that the claimant prepare of list of the grocery items she needed. He purchased only those items he approved of and doled them out to the claimant in the portions he deemed to be sufficient for the needs of the children while they were in the claimant's care.
- [59] Because the respondent had not left the matrimonial home and was paying virtually no support, the claimant again sought redress. On February 14, 2014, an interim order was made by Master Caldwell requiring the respondent to pay monthly child support of \$1,034 and spousal support of \$1,453, for a total of \$2,487 per month, based upon income attributable to the respondent and claimant of \$96,000 and \$16,000, respectively. Master Caldwell ordered that the respondent was entitled to deduct the sum of \$1,200 per month from this total in consideration of the fact that he was paying all of the expenses for the matrimonial home. The respondent paid this net amount to the claimant.
- [60] The parties sold the matrimonial home in November 2014 for \$632,000. Each of the claimant and the respondent has received approximately \$32,000 from the net proceeds of sale. The balance is being held in trust pending the outcome of these actions. The parties agree that this trust balance will be divided equally between them subject to the prior payment of their respective debt obligations to the plaintiffs.
- [61] Since the sale of the matrimonial home, the respondent has been paying the claimant \$2,487 per month in child and spousal support, in accordance with Master Caldwell's order.
- [62] The respondent is currently living in a rented basement suite in Port Coquitlam. The claimant is currently living in a rented apartment in Coquitlam. Although her rent is high relative to her income, she testified that it was the only option that was available at the time given the market and the terms of a mediated agreement she had with the respondent that she would live in a particular area to facilitate transfers of the children.

[63] The claimant testified that she is striving to become financially independent of the respondent and is making her best efforts to be successful in that regard. She is continuing her education and adding to her qualifications in the insurance and financial advisor field by taking courses at Sun Life and business courses unrelated to her Sun Life work. She also intends to qualify for her mutual fund license which she expects to receive in 2016.

[64] On December 3, 2014, the parties consented to an order setting out the details of their respective parenting arrangements going forward.

## 2. Claimant's Income

[65] The claimant's income for the relevant years, excluding the universal child tax benefit and the picoMatch dividends that were allocated to her, is as follows:

Year

Amount

2009

\$0

2010

\$21,082

2011

\$28,426

2012

\$15,349

2013

\$12,811

2014

\$21,300

## 3. Respondent's Income

[66] Since 2009, the respondent has derived all of his income from picoMatch and laterally from ITK. His income for the following years, excluding the universal child tax benefit and dividends declared by ITK (which are unknown), but including the grossed up value of all of the picoMatch dividends issued to the parties, is as follows:

Year

Amount

2007

\$84,713

(includes bonuses)

2008

\$71,682

2009

\$88,258

2010

\$153,000

2011

\$146,750

2012

\$120,103

2013

\$63,228

[67] The respondent testified that his income dropped in 2013 because of the time he spent dealing with this matrimonial litigation and because he had several medical issues resulting in several aborted surgeries. However, the more obvious explanation for this drop in income is that 2013 was the first year in which no dividends were distributed to the respondent. This does not necessarily mean that an amount similar to previous years was not available to the respondent, as evidenced by the dividends newly distributed to Mrs. Chui and greater retained earnings left in the company.

[68] Since early 2014, the respondent has been employed by ITK earning a salary of \$85,200 per year. He testified that the longevity of ITK's contract with Trader is far from certain and that he is concerned that it might end soon. However, he anticipates that ITK will be able to replace that work with contracts from new clients such that his current income will continue and perhaps increase.

[69] In contrast to the situation before the parties' separation, where virtually all of picoMatch's retained earnings were paid out by way of dividends, the company's retained earnings in the relevant years were: \$915 in 2012; \$32,191 in 2013; and \$22,908 in 2014. The respondent testified that, after payment of ongoing administration and accounting expenses, he expects that there will be no retained earning left in picoMatch by May 31, 2015.

#### 4. Line of Credit

- [70] The balance owing under the Line of Credit as at the date of the parties' separation on May 12, 2012 was \$94,457.34. The only debits recorded since then were in respect of interest charges and \$100 per month intended by the respondent as financial support for Mr. Chui. The balance owing on the Line of Credit as at December 17, 2012 was \$96,672.99.
- [71] By letter dated December 19, 2012, the plaintiffs demanded payment of \$96,672.99 from the parties. Based on Royal Bank of Canada's prime rate of 2.65% for the period from December 17, 2012 to October 31, 2013, interest on \$96,672.99 is \$2,558.25, for a total of \$99,231.24 (\$96,672.99 + \$2,558.25). The plaintiffs claim that amount from the parties, together with interest from and after November 1, 2013 pursuant to the Court Order Interest Act, R.S.B.C. 1996, c. 79.

### III. Analysis

- [72] Because the debt claim was brought as a separate action, I will determine this issue independent of the family claims. However, the facts related to the debt claim are intertwined with the family history. I will consider, first, whether the funds were advanced as a gift or a loan, and second, if the funds were a loan, who is liable for it.

#### A. Debt Claim

- [73] The respondent admits that the funds advanced by the plaintiffs under the Line of Credit were loans and that he is liable for the amount claimed by the plaintiffs. He maintains that all of the transactions recorded in the Ledger after his marriage to the claimant were for family purposes on behalf of the two of them and that the claimant is, therefore, liable for 50% of the debt.
- [74] The claimant denies any liability. She maintains that she did not agree to any loan from the plaintiffs and takes the position that the funds were advanced as a gift. In the alternative, she says that the terms of the loan are insufficiently clear because there is no repayment term. She also stated, during her submissions, words to the effect that the respondent's assurance to the federal government at the time he sponsored her immigration to Canada that he would provide her with basic financial support and, therefore, she ought not to be liable for the Bank of Dad expenditures in that regard. I assume, the claimant is referring to the three year guarantee period usually stipulated by the Federal government for sponsorship immigration.
- [75] The law regarding whether a transfer made by a parent to an adult child is a loan or a gift was summed up by Madam Justice Brown in *Hawley v. Paradis*, 2008 BCSC 1255 at para. 30, after a review of the applicable authorities:
- [30] Based on the case law presented to me, I conclude:
1. that the presumption of advancement no longer applies between adult children and their parents;

2. that as between adult children and their parents, the presumption is a resulting trust when the parents make gratuitous transfers to children;
3. that the court must consider all of the evidence in determining whether the parent intended the transfer as a gift or a loan;
4. that the factors considered in *Wiens* and *Locke* will assist the court in determining whether the advance was a loan or a gift.

[76] A determination of whether funds were advanced as a loan or a gift turns on the unique facts of each case. However, the following factors referred to above have been identified in the case authorities as those that should be considered when the advance occurs in a family context:

- a) whether there were any contemporaneous documents evidencing a loan;
- b) whether the manner for repayment is specified;
- c) whether there is security held for the loan;
- d) whether there are advances to one child and not to others, or advances of unequal amounts to various children;
- e) whether there has been any demand for payment before the separation of the parties;
- f) whether there has been any partial repayment; and
- g) whether there was any expectation, or likelihood, of repayment.

See *Wiens v. Wiens* (1991), 31 R.F.L. (3d) 265; *Locke v. Locke*, 2000 BCSC 1300 at para. 20; *Gill v. Jaspal*, 2010 BCSC 698 at para. 9.

[77] In determining the intent of the person who advances money in a family context, the court must weigh all of the evidence to determine whether the presumption of resulting trust has been rebutted; it will depend on the facts of each case: *Pecore v. Pecore*, 2007 SCC 17 at para. 55.

[78] Mr. Chui testified in a forthright and credible manner. His recollection of events and of the various transactions set out in the Line of Credit was remarkable given that they took place many years ago. It is clear that he was focused throughout the respondent's life (as well as the lives of his two other sons), on ensuring that every penny of discretionary spending was tracked as a withdrawal or loan from the Bank of Dad.

[79] The Ledger constituted a contemporaneous record of the financial transactions between the plaintiffs and the respondent. There was a history and practice of partial repayments by the respondent over the years when he was able to afford them. Similar transactions were made with each of Samson and Patrick and their families, however, in varying amounts.

- [80] I find that the monies advanced by the plaintiffs as documented in the Ledger were not gifts, but rather were intended to be advanced by way of a loan. There was clearly an expectation on the part of the plaintiffs that any debit balances on the Line of Credit would be repaid, with interest. When money spent by Mr. Chui was intended by him as a gift to his sons and their respective families as was the case, for example, with the trip to Asia, there was nothing recorded by Mr. Chui in the Ledger. Similarly, no entry was made in the Ledger regarding the plaintiffs' purchase of the 25% interest in the apartment. In contrast, the monies from the plaintiffs that were used to fund the purchase of the matrimonial home were entered in the Ledger showing the monies were a loan.
- [81] I also find that the loans recorded in the Ledger were not only accurate, they were accurate to the penny. I find that the Gift Letter did not reflect the true intention of the plaintiffs or the respondent.
- [82] This leaves the question of whether the loans were made by the plaintiffs solely to the respondent or to both the respondent and the claimant.
- [83] The claimant is both an intelligent and articulate woman. She is also strong, confident and assertive. She ably represented herself in both actions, particularly given that English is not her first language. She was well able to fight for what she perceived to be her interests. In most respects she testified in a forthright and sincere manner.
- [84] I accept the claimant's evidence that the respondent made all of the significant financial decisions for their family and that he did not discuss with her the details of his financial strategies, including the Gift Letter. I find that, although she knew of the respondent's longstanding financing arrangement with his parents and that the respondent continued to utilize that facility as needed, she was unaware that the parties' property, vehicles and other major purchases were financed through the Bank of Dad or that the plaintiffs held a 25% interest in the Port Coquitlam apartment or that money had been borrowed from the plaintiffs for the purchase of the matrimonial home. Her lack of knowledge was, in large part, due to her disinterest and her decision not to concern herself with those matters. I find that, throughout their relationship, the claimant delegated to the respondent the responsibility of dealing with their finances. In carrying out this responsibility, the respondent continued to use his Bank of Dad facility - a private arrangement between him and his parents.
- [85] The circumstances of this case are unique because the respondent was making use of a non-traditional banking system, or perhaps more accurately, a traditional, non-modern banking system. However, the agreement in relation to the Bank of Dad was between the plaintiffs and the respondent only. I find that the claimant was not a party to that agreement.
- [86] The respondent is liable to the plaintiffs for the sum of \$99,231.24, together with interest on that amount pursuant to the Court Order Interest Act from November 1, 2013 to the date of this judgment.

[87] The plaintiffs' claim against the claimant is dismissed.

## B. The Family Claims

### 1. Ongoing Spousal Support

[88] The claimant moved to Canada from Russia to be with the respondent, leaving behind her family and her university education. The parties quickly married and lived together as husband and wife for a little more than 8 years. They have two children. The respondent was the primary breadwinner and the claimant was the primary caregiver for the children.

[89] The law recognizes that an order for the payment of spousal support can be justified on the basis of both compensatory (economic disadvantage) and non-compensatory (need) grounds: *Moge v. Moge*, [1992] 3 S.C.R. 813 at 852; *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 at para. 49.

[90] In *Chutter v. Chutter*, 2008 BCCA 507, leave to appeal ref'd [2009] S.C.C.A. No. 41, Madam Justice Rowles discussed compensatory support at paras. 50-52 as follows:

[50] 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. The compensatory support principles are rooted in the "independent" model of marriage, in which each spouse is seen to retain economic autonomy in the union, and is entitled to receive compensation for losses caused by the marriage or breakup of the marriage which would not have been suffered otherwise (*Bracklow*, at paras. 24, 41). The compensatory basis for relief recognizes that sacrifices made by a recipient spouse in assuming primary childcare and household responsibilities often result in a lower earning potential and fewer future prospects of financial success (*Moge*, at 861-863; *Bracklow*, at para. 39). In *Moge*, the Supreme Court of Canada observed, at 867-868:

The most significant economic consequence of marriage or marriage breakdown, however, usually arises from the birth of children. This generally requires that the wife cut back on her paid labour force participation in order to care for the children, an arrangement which jeopardizes her ability to ensure her own income security and independent economic well-being. In such situations, spousal support may be a way to compensate such economic disadvantage.

[51] In addition to acknowledging economic disadvantages suffered by a spouse as a consequence of the marriage or its breakdown, compensatory spousal support may also address economic advantages enjoyed by the other partner as a result of the recipient spouse's efforts. As noted in *Moge* at 864, the doctrine of equitable sharing of the economic consequences of marriage and marriage breakdown underlying compensatory support "seeks to recognize and account for both the economic disadvantages incurred by the spouse who makes such sacrifices and the economic advantages conferred upon the other spouse"

[52] The Court in *Moge* discussed the relevance of the parties' standards of living in the context of compensatory support at 870:

Although the doctrine of spousal support which focuses on equitable sharing does not guarantee to either party the standard of living enjoyed during the marriage, this standard 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.

[Emphasis added and internal citations omitted in Chutter.]

[91] Non-compensatory support was discussed at paras. 54 and 55:

[54] Where compensatory principles do not apply, need alone may be sufficient to ground a claim for spousal support (Bracklow, at para. 43). Non-compensatory support is grounded in the "social obligation model" of marriage, in which marriage is seen as an interdependent union. It embraces the idea that upon dissolution of a marriage, the primary burden of meeting the needs of the disadvantaged spouse falls on his or her former partner, rather than the state (Bracklow, at para. 23). Non-compensatory support aims to narrow the gap between the needs and means of the spouses upon marital breakdown, and as such, it is often referred to as the "means and needs" approach to spousal support.

[55] The concept of "needs" in the context of non-compensatory spousal support goes beyond basic necessities of life and varies according to the circumstances of the parties. As stated by Finch J.A. (as he then was) in *Myers v. Myers* (1995), 17 R.F.L. (4th) 298, 65 B.C.A.C. 226, at para. 10:

"Need" or "needs" are not absolute quantities. They may vary according to the circumstances of the parties and the family unit as a whole. "Need" does not end when the spouse seeking support achieves a subsistence level of income or any level of income above subsistence. "Needs" is a flexible concept and is one of several considerations which a trial judge must take into account in deciding whether any order for spousal support is warranted.

[92] Section 15.2(6) of the Divorce Act, R.S.C. 1985, c. 3, outlines the objectives of spousal support:

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.

[93] Section 15.2(4) provides the factors to consider in making a spousal support order:

### Factors

- (4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including
  - (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.
- [94] The court must assess both the compensatory and the non-compensatory models when determining spousal support obligations to ensure that the objectives of the Divorce Act are properly addressed: *Barton v. Ophus*, 2009 BCSC 858 at para. 53. However, in doing so, the self-sufficiency and independence of each spouse must be encouraged, in so far as practicable. The court must also recognize the reality that divorced people may move on to other relationships and acquire new obligations which they may not be able to meet if they are obliged to maintain full financial burdens from previous relationships: *Bracklow* at para. 32.
- [95] The claimant submits that she is entitled to spousal support on both a compensatory and non-compensatory basis. She says that she was economically disadvantaged by being the primary caregiver to the children while the respondent worked full-time and built his software development career. She also says that she has need for spousal support and that the respondent has the means to pay it.
- [96] The claimant seeks an order that the respondent pay her spousal support in the amount of \$2,240 per month, based upon an income imputed to her of \$21,320 and an income imputed to the respondent of \$128,156. She submits that spousal support should continue to be paid to her for five years.
- [97] The respondent does not dispute the claimant's entitlement to spousal support. However, he takes issue with the amount of entitlement claimed by her. The respondent submits that the appropriate order is that he pays spousal support to the claimant in the amount of \$1,026 per month commencing April 1, 2015 and continuing for five years until March 31, 2020.
  - a) The Claimant's Income for the Purposes of Support
- [98] The respondent submits that the claimant's decision to leave her employment at The Brick Warehouse and move to Sun Life was an unnecessarily risky venture and was, in the circumstances, an imprudent, unrealistic and unproductive career aspiration.

[99] I disagree. I accept the claimant's evidence that her move to Sun Life was reasonable in the circumstances. She first learned of the opportunity and began taking the prerequisite examinations in 2011. The respondent supported her in this endeavour. He did not suggest that the move was improvident until after she had taken the position and it did not prove, at least so far, to be as lucrative as she had been led to believe.

[100] I accept that the claimant desires and is doing her best to become financially independent of the respondent.

[101] The parties are in agreement that the claimant's annual income for the purpose of support calculations is \$21,320.

b) The Respondent's Income for the Purposes of Support

[102] I did not find the respondent to be a credible witness regarding either his income or his financial affairs generally after the parties' separation. Within two weeks of the separation, he unilaterally issued shares in picoMatch to each of Mr. and Mrs. Chui, thereby diluting his and the claimant's shareholding from 50% to 1/6 (16.7%) each.

[103] He then caused picoMatch to issue dividends to Mrs. Chui at the end of May 2012. However, the dividend monies were received by the respondent, not by Mrs. Chui. The respondent paid all of the income tax liability incurred by Mrs. Chui. Initially he testified that he had borrowed the money from her. Later he said that he did not know who the dividends belonged to. Ultimately, under cross-examination, the respondent admitted that a loan agreement he had drafted indicating that he had received the dividend monies from Mrs. Chui as a loan was false.

[104] Although the respondent also testified that he gave up control of picoMatch to Mrs. Chui, he in fact continued to run the company as he had done previously. Indeed, during her cross-examination, Mrs. Chui repeatedly referred to picoMatch as "his company", referring to the respondent, and confirmed that he continued to make all decisions regarding how much he would draw from the company and when.

[105] The respondent testified that picoMatch hired several employees to assist in its business. He stated during his examination for discovery, that these employees were paid an hourly wage. However, he conceded during his cross-examination that his evidence in this regard was false and that picoMatch had neither hired any employees nor paid any wages.

[106] The respondent also testified that ITK had several employees. However, Mrs. Chui confirmed that the company uses only one part-time computer programmer on an "on call" basis. Another so-called employee turned out to be the respondent's girlfriend, Sarah, who is employed full time at Trader and who occasionally invoices other programming work through ITK and receives 100% of the revenues. The final so-called employee was identified as the respondent's brother, Patrick, who occasionally tests some of the computer programs that the respondent writes.

- [107] Mrs. Chui confirmed on cross-examination that the respondent is the major revenue generator for ITK. She also confirmed that the respondent continues to be the sole contact person with Trader, ITK's biggest customer by far.
- [108] The respondent testified that ITK maintains two offices, one being a home and the other a "head office" in his girlfriend's apartment in Richmond. However, Mrs. Chui confirmed that ITK does not have a head office in Richmond, only the home office.
- [109] When pressed on cross-examination about the various post-separation business transactions, the respondent became excessively defensive and launched into obfuscation and bafflegab in an attempt to explain his actions. He feigned confusion when questions were clear. He claimed not to have any knowledge regarding the most basic area of ITK's business operations.
- [110] The respondent denied knowing anything about ITK's revenues and maintained that he was merely its employee with no other involvement or control.
- [111] I do not believe the respondent's evidence regarding his motivation for the post-separation business transactions involving picoMatch and ITK. I did not derive any additional comfort from Mrs. Chui's testimony. Her evidence regarding the post-separation corporate strategies and transactions came across as scripted and rehearsed.
- [112] I find that the respondent issued the shares in picoMatch, caused ITK to be incorporated and then transferred all of picoMatch's business to ITK all in an attempt to decrease his income, distance himself from a secure income earning capacity and to minimize his spousal support obligations. The respondent used Mrs. Chui as a puppet for his cause. I find that, at all material times, the respondent was and continues to be the driving force of and have de facto control over both picoMatch and ITK for all purposes. I also find that all of the income of ITK is available to him.
- [113] In the result, I reject the legitimacy of all documentation and transactions either directly or indirectly involving the respondent and Mrs. Chui from and after May 12, 2012.
- [114] Regarding the respondent's future income earning prospects, by his own evidence, he excels at software development and is a "star" in that area. I find that he will continue to thrive in that area and earn at least the same income that he earned prior to the parties' separation. His evidence that his long term engagement with Trader is in jeopardy was pure, unsupported speculation.
- [115] For the purposes of spousal support, I impute an annual income to the respondent of \$120,103, which was the income available to him at the time of separation.

c) Ongoing Spousal Support Order

[116] According to the mid-range of the Spousal Support Advisory Guidelines, based upon incomes of \$120,103 and \$21,320 imputed to the respondent and claimant respectively, the spousal support payable by the respondent is \$2,034 per month. I order that the respondent pay spousal support to the claimant in the amount of \$2,034 per month commencing April 1, 2015, for a period of five years.

## 2. Ongoing Child Support

[117] The claimant seeks an order that the respondent pay child support in the amount of \$1,497 per month. The respondent submits that an order that he pay child support in the amount of \$940 per month is appropriate.

[118] I have found that the incomes to be imputed to the respondent and the claimant should be \$120,103 and \$21,320, respectively. The Federal Child Support Guidelines, SOR/97-175 ("Guidelines") result in child support payments by the respondent and the claimant of \$1,735 and \$341, respectively. After taking into account the amounts set out in the Guidelines tables for each of the parties, the increased costs of shared custody arrangements and the conditions, means, needs and other relevant circumstances of each of the parties and the children as required by s. 9 of the Guidelines, I find that a set off of the applicable table amounts is appropriate in the shared custody arrangement of the parties.

[119] I order that the respondent pay child support to the claimant in the set-off amount of \$1,394 per month.

## 3. Retroactive Spousal and Child Support

[120] The claimant seeks a lump sum award for retroactive spousal and child support of \$25,000. She submits that, if the respondent had moved out of the matrimonial home on June 1, 2013 as he told Master Keighley he was going to, he would have had to pay support to the claimant of \$4,439 per month at least until Master Caldwell's order was made. He did not begin to pay support until February 14, 2014 when Master Caldwell ordered that he pay \$1,287 per month (net of a \$1,200 per month set-off). From and after the sale of the matrimonial home in November 2014, the respondent has been paying child and spousal support totalling \$2,487 per month.

[121] On the date of the parties' separation, the following amounts were on deposit in the parties' joint bank accounts:

Account No.

Amount

0039274824

\$7,079.40

0046523569

\$1,222.81

0062271655

\$671.33

[122] Shortly after the date of the parties' separation, the respondent cancelled the claimant's credit card and cut off her access to their bank accounts, with the sole exception of Account No. 0062271655 which had a balance of \$671.33.

[123] The respondent alone had access to the parties' other bank accounts, as well as the retained earnings of picoMatch. He testified, and I accept, that these monies were utilized for the payment after separation of family expenses incurred prior to separation, such as credit card bills, mortgage payments, etc.

[124] The respondent submits that no retroactive support is payable because from the date of separation until November 2014, he:

- a) paid the majority of the food for the claimant and the children;
- b) paid all expenses associated with the matrimonial home;
- c) paid many of the children's extracurricular expenses, including pre-school costs; and
- d) contributed to the claimant's gasoline expenses.

[125] While that may be so, the respondent did not provide the financial support to the claimant that the law required of him. He simply paid the household expenses and \$30 per week towards the claimant's gasoline expenses.

[126] The respondent argues that the failure of Master Keighley to order the respondent to pay support if he stayed in the house precludes any order for support between the date of Master Keighley's reasons for judgment dated May 1, 2013 and those of Master Caldwell dated February 14, 2014. I disagree. Master Keighley's decision was plainly made in the context of having been told by the respondent that he would be moving out of the house on June 1, 2013. Master Keighley did not turn his mind to the unanticipated circumstance that the respondent would decide not to leave the home.

[127] I acknowledge that, in his reasons for judgment dated February 14, 2014, Master Caldwell considered the fact that the respondent had saved a substantial amount of money by not moving out of the house and, accordingly, ordered spousal support to be paid at the high end of the range, a difference of \$304 per month from the mid-range. Over the past 12 months, the respondent has, therefore, paid \$3,648 more in spousal support than he would have paid had Master Caldwell used the mid-range support amount, which is a far cry from the approximately \$10,000 that Master Caldwell determined the respondent had saved by making a unilateral decision to remain in the matrimonial home.

- [128] At the time of the separation, the claimant was working part-time at The Brick Warehouse, studying for her insurance examination and providing child care. She passed her examination and started work at Sun Life in early 2003, a career change that the respondent had supported prior to separation. Unexpectedly, the new job proved to be a significant financial challenge for the claimant. She was forced to borrow a total of \$21,000 from her parents and from a friend in order to pay her expenses. It was then that she sought the order for support that was heard by Master Keighley on May 1, 2013.
- [129] In contrast, the respondent continued to work as an independent contractor as he had done prior to separation. His parents were providing child care during his parenting times without charge. He paid the claimant only \$30 per week (approximately \$130 per month) for gasoline and provided groceries.
- [130] In my view, the respondent's post-separation conduct in cutting the claimant off from the family's income stream, in issuing picoMatch shares to his parents, in transferring picoMatch's business to ITK and in entering into an arrangement with his mother to artificially reduce his income constituted the kind of blameworthy conduct referred to by the court in *D.B.S. v. S.R.G.*, 2006 SCC 37 at paras. 131-134, justifying an award of retroactive support to the date of separation. There is no evidence that the respondent will suffer significant hardship if such an award is made.
- [131] Given my finding that the respondent's income for support purposes after separation was greater than the amount presented to Master Caldwell, the respondent should have been paying more in child and spousal support than was ordered to be paid by Master Caldwell. Moreover, he should have been paying it from and after May 12, 2012 rather than commencing in February 2014, an additional 21 months at \$1,157 per month (\$2,487 - \$1,200 - \$130) for a total of \$24,297.
- [132] In the circumstances, an order that the respondent pay the claimant a lump sum of \$25,000 in retroactive child and spousal support is appropriate.

#### 4. Division of Family Assets

- [133] Because the family proceeding regarding the division of assets was commenced before the coming into force of the Family Law Act, S.B.C. 2011, c. 25, pursuant to the s. 252 transitional provision, this issue is governed by the FRA.
- [134] The starting point under s. 56 of the FRA is that each spouse is entitled to a one-half interest in each family asset as of the triggering date which, in this case, is the s. 57 declaration made on December 28, 2012. A family asset is property owned by one or both spouses that is ordinarily used for a family purpose: s. 58. The onus is on the spouse opposing a s. 56 claim to prove that the property in question is not ordinarily used for a family purpose. Finally, under s. 65, the court can order that property be unequally divided if an equal division would be unfair.

[135] Section 65 of the FRA provides, in part:

65 (1) If the provisions for division of property between spouses under section 56, part 6 or their marriage agreement, as the case may be, would be unfair having regard to

- (a) the duration of the marriage,
- (b) the duration of the period during which the spouses have lived separate and apart,
- (c) the date when property was acquired or disposed of,
- (d) the extent to which property was acquired by one spouse through inheritance or gift,
- (e) the needs of each spouse to become or remain economically independent and self sufficient, or
- (f) any other circumstances relating to the acquisition, preservation, maintenance, improvement or use of property or the capacity or liabilities of a spouse,

the Supreme Court, on application, may order that the property covered by section 56, Part 6 or the marriage agreement, as the case may be, be divided into shares fixed by the court.

[136] One such circumstance relevant to this case is debt I have found was accumulated by the respondent. Madam Justice Sharma recently summarized the law regarding family debts under the FRA in *Wolfe v. Hartnett*, 2014 BCSC 2308 at paras. 49 and 50:

[49] The term "family debt" is not defined in the FRA nor does it contain any provision for the division of debt. In contrast to the FLA, debt itself is not presumptively divided between spouses under the FRA. Instead, the liabilities of one or both spouses are considered one of factors under s. 65(1) when determining whether an equal division of the family assets would be unfair.

[50] The courts recognize that spouses jointly contribute both to the accumulation of assets and of debt. The Supreme Court of Canada states the following at para. 9 of *Stein v Stein*, 2008 SCC 35:

[9] It seems self-evident that, generally speaking, both assets and debts need to be considered in order to ensure fairness upon the breakdown of a marriage. As the British Columbia Court of Appeal noted in *Mallen v. Mallen* (1992), 1992 CanLII 4034 (BC CA), 65 B.C.L.R. (2d) 241:

the equality of treatment of the spouses as required by the scheme of the Act is intended to be a true equality in real terms, and not an artificial equality reached by ignoring some of the facts and emphasizing others. In order to bring about a true equality it is necessary that debts and other liabilities of the spouses at the time of the triggering event and earlier be examined in a way that will illustrate the true relationship between the debts, on the one hand, and the attainment of equality and fairness, on the other. [para. 5]

## 5. The Bank of Dad Line of Credit

[137] It is clear from the Ledger and the Bank Book that, with the exception of the debits of \$100 per month commencing in August 2006 intended as "support payments" to Mr. Chui (totalling \$7,000), all of the transactions recorded between the date of the parties' marriage on February 21, 2004 and the date of their separation on May 12, 2012, including interest charges, were incurred for family purposes for or on behalf of the parties. The funds were borrowed by the respondent and used to pay his and the claimant's day-to-day living and other family expenses. The claimant argues that it would be unfair or inappropriate for her to be saddled with any portion of the family debts incurred for normal living expenses during the period of time that the respondent had agreed with the federal government to provide the claimant with the basic requirements of life. However, in this case, there was no debt with the Bank of Dad during that three year period of time until October 2007 when the parties purchased a Honda vehicle. The purchase of that vehicle was the only reason the parties were overdrawn at the Bank of Dad prior to January 2008. That purchase does not, in my view, qualify as a basic requirement of life.

[138] I find that the Bank of Dad debt incurred by the respondent prior to the date of separation in the amount of \$87,457.34 (\$94,457.34 less the support payments to Mr. Chui of \$7,000) is a family debt incurred by the respondent for the benefit of both the claimant and the respondent.

## 6. Jewellery and Other Items

[139] The parties have certain jewellery and other items that are currently in a safe which is in the claimant's custody. The parties agree that the following of those items will be distributed to and owned by the claimant (all item number references are to Exhibit 1, Volume 4, Tab 83):

Item no. referred to in Exhibit 1, Volume 4, Tab 83

Description of item

2.

Christmas ornament (Bear)

3.

Christmas ornament (Sled)

4.

Russian Rubles

5.

Russian document (Nicholas Baptism?)

6.

Crystal with box (baby carriage)

8.

Silver jewellery with box

9.

Necklace with pendant

11.

Bracelet

13.

Wedding crystal and gold plaque

14.

Pearl earrings

17.

Pearl pendant necklace

23.

Crystal earrings

25.

Gold Bracelet

26.

Pendant

27.

Crystal sea shell

32.

Silver necklace

36.

Ruby gold ring

37.

Diamond white gold ring

38.

Diamond white gold ring

39.

Gold earrings

40.

Ruby gold ring

41.

Gold pendant and necklace

42.

### White gold ring

[140] The following items in the safe belong to the children and will be kept for them by the claimant in the parties' safety deposit box (all item number references are to Exhibit 1, Volume 4, Tab 83):

Item no. referred to in Exhibit 1, Volume 4, Tab 83

Description of item

12.

Baby bracelet + necklace charm

15.

Gold bells

19.

Ultrasound photos

20.

Nicholas baby passport

29.

Baby memorabilia

30.

Baby memorabilia

[141] The balance of the items listed in Exhibit 1, Volume 4, Tab 83 will be distributed to and owned by the respondent.

## 7. RRSPs

- [142] The parties agree that the RRSP the respondent had at the time of separation, which is presently valued at \$17,586.17, will be divided equally between them. The claimant advised that she intends to open an RRSP account into which her share of the respondent's RRSP will be rolled over.

## C. Income Tax Obligation

- [143] The claimant did not receive the dividends allocated to her in 2012. She says that the respondent should be required to fund the income tax liability arising from the dividends.
- [144] It is apparent, and I so find, that the shareholder's loan monies allocated to the claimant were deposited into the parties' joint account and used for family purposes prior to the parties' separation. The understanding between and practice of the parties prior to their separation was that the respondent would pay, albeit from family funds, the income tax liability arising from this tax planning arrangement that he had orchestrated and managed prior to the separation. In the circumstances, the tax liabilities of the parties that arose from the picoMatch dividends were family debts. Family funds should have been used to pay them. The respondent used shareholder's loans from picoMatch to pay his tax liability. The same should have been done in respect of the claimant's tax liability.
- [145] The respondent paid from family funds income tax in the amount of \$6,094 in respect of the dividends he received in 2012. The claimant's unpaid tax liability is \$6,729 in respect of the dividends the respondent allocated to her in 2012.
- [146] The respondent concedes that the tax liabilities for both of the parties should have been paid from family assets.
- [147] The respondent is liable to pay, from his portion of the proceeds of sale of the matrimonial home, 50% of the claimant's income tax liability, namely \$3,364.53 plus 50% of all further interest and other charges levied by the Canada Revenue Agency.

### 1. Remaining Proceeds from the sale of the Matrimonial Home

- [148] Because the respondent alone is liable to his parents for the Line of Credit debit, I find it would be unfair to equally apportion the remaining proceeds from the sale of the matrimonial home. Accordingly, I am ordering that the claimant's half of this family debt, namely \$43,728.67 be paid to the respondent by way of a reapportionment of the remaining proceeds from the sale of the matrimonial home.
- [149] Similarly, I find it would be unfair not to apportion to the claimant from the respondent's share of the sale proceeds of the matrimonial home the amounts I have found are payable by him in respect of retroactive spousal and child support and the claimant's income tax obligation. Accordingly, I am ordering that the amount of \$28,364.53 (\$25,000 plus \$3,364.53) together with 50% of all further interest and other charges levied by the Canada

Revenue Agency in respect of the claimant's income tax liability be paid to the claimant by way of a reapportionment of the remaining proceeds from the sale of the matrimonial home.

- [150] By agreement, the remaining proceeds of sale of the matrimonial home which are currently in trust, if any, will be divided equally between the parties.

#### **D. Custody and Section 7 Expenses**

- [151] The parties have agreed to share custody of the children and to pay for their s. 7 special expenses 70% by the respondent and 30% by the claimant.

#### **IV. Conclusion**

##### **A. Debt Action**

- [152] The plaintiffs are entitled to judgment against the respondent in the amount of \$99,231.24, together with interest pursuant to the Court Order Interest Act from November 1, 2013 to the date of judgment.

##### **B. Family Action**

- [153] The parties are divorced from each other.
- [154] The respondent will pay spousal support to the claimant in the amount of \$2,034 per month commencing April 1, 2015, for a period of five years.
- [155] The respondent will pay ongoing child support to the claimant in the amount of \$1,394 per month.
- [156] The foregoing spousal and child support payment amounts will be adjusted annually on July 1 to reflect the parties' respective incomes or, if so ordered, imputed incomes.
- [157] The jewellery and other items currently in the parties' safe will be divided between them as agreed and set out above.
- [158] The respondent will cause 50% of the RRSP to be rolled over to the claimant's RRSP as soon as practicable.
- [159] The claimant will pay to the respondent, by way of reapportionment from her 50% share of the remaining proceeds from the sale of the matrimonial home, the sum of \$43,728.67 in respect of her share of the family debt.
- [160] The respondent will pay to the claimant, by way of reapportionment from his 50% share of the remaining proceeds from the sale of the matrimonial home, the sum of \$25,000 in retroactive child and spousal support.

- [161] The respondent will pay to the claimant, by way of reapportionment from his 50% share of the remaining proceeds from the sale of the matrimonial home, the sum of \$3,364.53 plus 50% of all further interest and other charges levied by the Canada Revenue Agency as his contribution towards the income tax liability she incurred as a result of dividends allocated to her by picoMatch in 2012.
- [162] Each of the claimant and the respondent is entitled to 50% of the balance, if any, of the remaining proceeds of sale of the matrimonial home together with any interest earned thereon while on deposit after the above reapportionments.
- [163] The respondent admitted his liability in respect of the debt action prior to trial. The claim proceeded to trial because the claimant denied any liability for it. The claimant was successful in her defence of the claim. The claimant is entitled to her costs of the debt action as against the plaintiffs at Scale B but only for 3 days of trial.
- [164] As the claimant was primarily successful in the family action, she is entitled to her costs of the family action at Scale B for 3 days of trial.

"G.C. Weatherill J."

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