

CANADA / JUDGMENT

Sherman v. Holm

2022 BCSC 1642

COURT

Supreme Court of British Columbia

DECIDED

11 July 2022

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2022 BCSC 1642 Sherman v. Holm

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sherman v. Holm,

2022 BCSC 1642

Date: 20220711

Docket: E212138

Registry: Vancouver

Between:

Laurie Marlene Sherman

Claimant

And

Russell Brett Holm

Respondent

Before: Master Vos

Oral Reasons for Judgment

In Chambers

(Hearing proceeded via MS Teams)

Counsel for the Claimant:

M.T. Ostrow

Counsel for the Respondent:

D.B. Simpson

Place and Date of Hearing:

Vancouver, B.C.

July 5-6, 2022

Place and Date of Judgment:

Vancouver, B.C.

July 11, 2022

- [1] THE COURT: The claimant applies for an order that would require the parties' former family residence to be sold. If that order is granted, she seeks an order that would grant her sole conduct of the sale and an order that would authorize interim distributions from the proceeds of the sale. The respondent opposes the orders sought by the claimant.
- [2] This decision is being delivered as oral reasons. If the oral reasons are transcribed, I will likely edit them in order to clarify the judgment in written form and may include information from case authorities and evidence on matters mentioned in an abbreviated manner in the reasons provided in court. However, the result and the core analysis will not change.

Background

- [3] This is a family law case. The claimant alleges the parties began living in a marriage-like relationship in March 2014; the respondent alleges their marriage-like relationship began in February 2017. The parties separated in August 2021.
- [4] The parties do not have any children from their relationship with each other, but both have adult children from previous relationships.
- [5] The claimant is 57 years old. She was employed by the Abbotsford School District but now is disabled from working because of injuries she sustained in a motor vehicle accident. She receives Canada Pension Plan disability benefits.
- [6] The respondent is 65 years old. He is a retired Air Canada employee. He and his son, Aaron Holm, own and operate Lot Masters Maintenance Corp. ("Lot Masters"). Lot Masters provides lot maintenance services for industrial sites, does seasonal snow removal, and operates a garbage collection and recycling business.

- [7] The notice of family claim was filed on August 11, 2021. A response to family claim and a counterclaim were filed on September 16, 2021. The parties attended a judicial case conference on December 2, 2021. The trial of this case is scheduled for a five-day hearing starting on May 1, 2023.

Analysis

- [8] The application at Part 1, para. 1 of the claimant's notice of application filed June 20, 2022 seeks an order for sale of the parties' former family residence. The former family home is on a 2.25 acre property in Langley, BC (the "Property"). The respondent is on title as the sole owner of the Property.
- [9] Rule 15-8(1) of the Supreme Court Family Rules, B.C. Reg. 169/2009 (the "Rules") provides that the court may order the sale of a property in a family law case if it appears necessary or expedient that the property be sold.
- [10] The onus is on the applicant, here the claimant, to establish that sale of the property is either necessary or expedient. The test is disjunctive.
- [11] If sale of the property is not "necessary", the "expedient" branch of the test has been interpreted as meaning that the sale be advantageous to both parties: *Reilly v. Reilly*, [1992] B.C.J. No. 2561 (B.C.C.A.), para. 35.
- [12] On an application for an interim sale of a former matrimonial residence, the court often considers whether sale of the property may promote early settlement of the case: *Reilly*, para. 37.
- [13] In *Kapoor v. Makkar*, 2020 BCCA 223, at para. 22, the Court of Appeal referred to case authorities which indicate that factors that have been considered in determining whether sale of a family home should be ordered at trial will always be relevant on an application for sale, including:
1. Children's need for stability and easy access to their school and friends, particularly in the period immediately following the separation of their parents;
 2. The availability (including affordability) of alternative accommodation for each spouse and his or her dependants;
 3. The emotional condition of the spouses, especially the parenting spouse;
 4. External economic factors (e.g., a declining market);
 5. Wasting of the asset, and
 6. The capacity of the parties to maintain the asset.
- [14] Any doubt about the justice of an order for sale on an interim application should be resolved in favour of the status quo: *Bodo v. Bodo*, [1990] B.C.J. No. 346, para. 21.

- [15] Potential prejudice to a party must always be a factor in determining an issue on an interim basis that irrevocably alters the status quo: Bodo, para. 26.
- [16] Turning to the factors to be considered.
- 1) Is sale of the Property necessary? If sale is not necessary, would it be advantageous to both parties?
- [17] The claimant submits that sale of the Property is necessary because she has insufficient income and savings to meet her expenses and properly address issues she faces in this litigation.
- [18] The claimant was employed by the Abbotsford School District. She sustained injuries as a result of a motor vehicle accident. She has deposed that beginning in January 2016 she was unable to continue working for the Abbotsford School District because of back problems she had from the motor vehicle accident (claimant's second affidavit, made June 20, 2022, para. 51). She went on paid medical leave for 16 weeks and then was moved to an unpaid leave of absence (claimant's second affidavit, para. 51).
- [19] The claimant's Form F8 financial statement dated November 4, 2021 shows she has limited income. She presently receives a Canada Pension Plan disability pension. Her 2020 income tax return indicates she received CPP benefits totalling \$9,414.72 in 2020. She also operates a small horse boarding business and breeds and sells Persian cats. She estimates that she makes a net income of about \$7,000 per year from those activities (claimant's second affidavit, para. 53). Her total annual income therefore is approximately \$16,415.
- [20] The claimant pursued claims for injuries and losses she sustained as a result of the motor vehicle accident. Her list of documents includes a copy of a cheque from the Insurance Corporation of BC dated October 21, 2020, in the amount of \$221,083.91. The claimant has indicated this is the amount she received from the settlement of her accident related claims.
- [21] The claimant has deposed that she used her ICBC settlement funds to pay bills, to purchase a new vehicle and spent approximately \$50,000 from those funds for landscaping and improving outbuildings on the Property (claimant's second affidavit, para. 54).
- [22] The claimant's November 4, 2021 Form 8 financial statement shows investments with Manulife totalling \$70,766.62. The claimant states that as of November 4, 2021 this was the amount remaining from the ICBC settlement funds. The claimant says she has now spent all of the funds she received from the ICBC settlement.
- [23] In her second affidavit, the claimant deposes at para. 54, that she has "\$0" left from the ICBC settlement funds. However, at para. 63 of the same affidavit she states she has "exhausted most of my funds from my ICBC settlement". The respondent submits that this passage from para. 63 creates an ambiguity as to whether the claimant still has funds from her ICBC settlement. The claimant has provided an explanation, indicating that there were some funds remaining when this portion of her second affidavit was prepared. She clarifies the

matter in a recent affidavit, her third affidavit, made June 29, 2022. At para. 16 she deposes "I have depleted most of my savings and all of my ICBC settlement funds".

- [24] The respondent has not provided convincing evidence to establish that the claimant has a significant portion of her ICBC settlement funds, or other assets, available to her. His submissions on that issue seem to be based on suspicion rooted in distrust of the claimant. On the other hand, the claimant has clearly addressed the issue in affidavits she swore or affirmed, thereby putting her at risk of perjury if the information is untrue. In those circumstances, the claimant's evidence indicating she has depleted most of her savings and all of her ICBC settlement funds will prevail.
- [25] The claimant has limited cash flow. Her CPP disability benefits currently are about \$800 per month. Her business income from boarding horses and selling cats would average about \$583 per month. Her November 4, 2021 Form 8 financial statement indicates her monthly expenses total \$3,769.29, about \$2,386 more than her monthly income. Those expenses do not include the expenses for an apartment she recently rented. Although the claimant has not set out the amount of the rent, a private investigator hired by the respondent has indicated it is \$2,800 per month (respondent's second affidavit, made June 27, 2022, para. 40).
- [26] The evidence the claimant has provided about her income and assets clearly establishes that she has very limited resources to fund her expenses of daily living and the fees required for this litigation.
- [27] The respondent's Form 8 financial statement, made November 23, 2021, indicates that his expenses also exceed his income. It shows pension income from Air Canada at \$14,544.96, plus Canada Pension Plan pension income of \$10,256.92, plus rental income of \$36,900, plus self employment and other income totalling \$7,404.92. Income from these sources totals \$69,106.80 per year. The expenses he has declared in his Form 8 total \$116,825.16 per year.
- [28] The parties took possession of the Property on September 18, 2014. The claimant contends that the Property was purchased after the parties began living in a marriage-like relationship and therefore is presumed to be family property pursuant to s. 84(1) of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. The respondent says the parties' marriage-like relationship did not begin until February 2017 and takes the position that excluded property claims should factor into the valuation of the Property as a family asset.
- [29] The materials for this application include an appraisal of the Property prepared by Dean Doolin. It estimated the market value of the Property to be \$3,475,000 as of December 1, 2021.

- [30] Mr. Doolin prepared a second appraisal report. It estimated the market value of the Property as of February 28, 2017 at \$2,150,000. This historical appraisal was done to determine if the market value of the Property had increased since the date the respondent says the parties started their marriage-like relationship (February 2017). The two appraisals indicate the market value of the Property increased by \$1,325,000 between February 28, 2017 and December 1, 2021.
- [31] There is a mortgage on the Property. The outstanding balance on the mortgage was indicated at \$582,000 in the respondent's November 23, 2021 Form 8 financial statement.
- [32] The claimant states that the vast majority of her lifetime capital is tied up in the Property. This certainly seems to be the case. That also appears to be the case for the respondent.
- [33] The equity the parties have in the Property would be approximately \$2,893,000 as of December 2021 (\$3,475,000 appraised value - \$582,000 mortgage). If the Property was acquired during the parties' spousal relationship, it would be presumed that the parties would share the equity equally, approximately \$1,446,500 each. If the respondent succeeds on his argument that the parties' marriage-like relationship did not begin until February 2017, then, according to the claimant's calculations, the respondent would be able to assert an excluded property claim of approximately \$1,500,000 and the claimant would have an excluded property claim of about \$400,000. The remaining equity would be approximately \$993,000 (\$2,893,000 - excluded property claims of \$1,500,000 and \$400,000) and would result in payments to the claimant of \$896,500 ($\frac{1}{2}$ of \$993,000 + her excluded property claim of \$400,000) and to the respondent of \$1,996,500 ($\frac{1}{2}$ of \$993,000 + his excluded property claim of \$1,500,000).
- [34] The claimant argues that either of these estimated values of her interest (\$1,446,500 or \$896,500) are beyond the means of the respondent for a buy-out of the claimant's interest in the Property.
- [35] The respondent acknowledges that the Property may have to be sold in order to satisfy each party's interest in the Property (respondent's second affidavit, para. 30). However, on this application he asks that any decision regarding sale of the Property be delayed so he has more time to determine if he can buy-out the claimant's interest in the Property.
- [36] The prospect of the respondent perhaps executing a buy-out of the claimant's interest in the Property was contemplated quite some time ago. The parties consented to an order dated November 15, 2021. Paragraph 19 of the order provided that by October 15, 2021 the respondent was to deliver a proposal to the claimant respecting a buy-out of the claimant's interest in the Property. Paragraph 20 indicated that the claimant was to respond to that proposal by October 22, 2021. Paragraph 21 provided that if the claimant's ownership interest in the Property was not resolved by December 2, 2021, either party would be at liberty to bring an application for a summary trial to resolve the parties' respective interests in the Property or an application for sale of the Property. Counsel advised that the steps contemplated in paras. 19 and 20 were carried out.

- [37] The respondent's request to delay sale of the Property so he can have more time to determine if he can buy-out the claimant's interest in the Property has to be placed in context of what occurred in relation to the November 15, 2021 consent order. The procedures set out in the order did not result in a buy-out. The order set a December 2, 2021 deadline for that process, after which either party would be at liberty to bring an application for sale of the Property. It now is more than seven months after the December 2, 2021 deadline. As pointed out in the claimant's reply submissions, the respondent's materials for this application do not identify any commitments from financial institutions, any applications, or even any emails in relation to steps the respondent may have taken to obtain financing. This application clearly put the respondent's ability to obtain financing to buy-out the claimant's interest in the Property in issue. One would think that all efforts to potentially effect a buy-out would be detailed by the respondent. This is significant, as the respondent would clearly have known since December 2, 2021 that he needed to act in an expeditious manner as he would likely face an application to sell the Property.
- [38] The respondent states that his son, Aaron Holm, may be able to assist him in raising funds required for a buy-out of the claimant's interest in the Property.
- [39] Aaron Holm's first affidavit, made June 26, 2022, indicates he is 31 years old. At para. 4 Aaron Holm indicates he owns 50% of the shares of Lot Masters and that he received the shares as a gift from his father in the fall of 2020. At para. 24 he states that his work with Lot Masters is his only source of income and he typically earns approximately \$6,000 per month gross income. At para. 20 he explains that Lot Masters operates its business from the Property, does not pay rent, but does pay for utilities on the Property. At para. 22 he deposes that Lot Masters has very little money in its bank accounts, carries a lot of debt and is able to carry on as a business only because it operates out of the Property (presumably, because it does not have to pay rent for its use of the Property). At paras. 27 and 28 he indicates he is committed to working with his father to see if they can obtain funds to finance a buy-out of the claimant's interest in the Property and says he and his father have "started to make some preliminary inquiries in this regard". He does not specify the nature of those inquiries. He states he is uncertain of the time it will take.
- [40] Aaron Holm does not provide any indication of the likelihood of him obtaining financing that could result in a buy-out of the claimant's interest in the Property. The claimant refers to Aaron Holm's stated income of about \$6,000 per month and questions whether there is a realistic chance he might be able to obtain financing in the range required for a buy-out, which could be more than \$1.4 million.
- [41] In result, the respondent and his son, Aaron Holm, have not put forward a viable plan for a potential buy-out the claimant's interest in the Property.

- [42] The respondent's delay may, in part, be explained by his perception of the real estate market. At para. 27 of his second affidavit the respondent states that he has been advised by his realtor that "the real estate market is softening and values are starting to decline". He goes on to say that he therefore has some optimism that he and Aaron may obtain financing. This must mean that the respondent hopes the value of the Property will decrease to an amount within their potential range of financing for a buy-out.
- [43] The Property is a family asset. The objective in selling a family asset is to maximize its return, so both parties will receive as much as possible from the asset. The respondent's apparent strategy of delaying sale or buy-out of the Property so the market value of the Property will decline would decrease the funds the claimant would recover for her share of family assets. This would be fundamentally unfair to the claimant.
- [44] The respondent also argues that the Property should not be sold because it is needed for the operations of Lot Masters. The respondent has deposed that Lot Masters operates at a loss each year (respondent's second affidavit, para. 17). The loss occurs even though Lot Masters does not pay any rent for the facilities it uses on the Property.
- [45] The claimant is not obliged to subsidise Lot Masters. Furthermore, Lot Masters is not contributing to the family assets and a delay of the sale of the Property to facilitate Lot Masters' ongoing use of the Property would not be consistent with sensible realization on the value of family assets.
- [46] The respondent speculates that it may be difficult to obtain an alternate location for Lot Masters if the Property is sold. The respondent operated Lot Masters from his apartment in Richmond before the parties moved to the Property. Although the business of Lot Masters may have changed a bit since then, especially with its acquisition of Captain Recycling, the respondent provided no convincing evidence that it could not be operated out of another address.
- [47] On the evidence provided concerning the claimant's financial status, there is no real doubt that the sale of the Property is necessary for her to recover her lifetime capital and pay her expenses post separation.
- [48] The respondent has not provided a viable plan to buy-out the claimant's interest in the Property. He has had an extended period of time to do so. He has known for more than seven months that this application was possible but has not shown that he has taken appropriate steps to determine if he could obtain financing for a buy-out. His tactic to delay the sale so the market value of the Property may decrease cannot be endorsed by the court.
- [49] It therefore is necessary for the Property to be sold.
- [50] The sale of the Property also is inevitable. Both parties have been residing in the Property pursuant to occupancy arrangements set out in the November 15, 2021 consent order. However, the claimant recently obtained rental accommodation because she has become fearful of the respondent and feels the need to sleep elsewhere. It is evident that the parties

will have to obtain separate residences because of the distrust and fear that has developed. They do not have the financial resources to maintain the Property and pay for an additional residence.

[51] Sale of the Property also would be expedient, as it seems to be advantageous to both parties for the Property to be sold at this time. Both parties' Form 8 financial statements indicate they have expenses well in excess of their income. Neither have significant assets, other than their interest in the Property. It would be difficult, or impossible, for the parties to pay any unexpected expenses relating to the Property. If the respondent's realtor is correct, and the Property is declining in value, it would be advantageous to both parties to maximize its value now. Sale of the Property would also assist with respect to moving the parties along in establishing their post separation lives.

2) Would sale of the former family residence promote early settlement of this family law dispute?

[52] The claimant submits that issues relating to the Property are the greatest source of contention between the parties. The affidavits provided for this application indicate there are significant disputes concerning the Property. Attempts to resolve the claims relating to the Property pursuant to the procedure set out in the November 15, 2021 consent order have been fruitless. Sale of the Property would provide certainty with respect to the value of the parties' main asset and remove a source of contention between the parties. It is reasonable to expect this may prompt or assist in settlement negotiations between parties.

3) Would sale of the former family residence impact children's need for stability and easy access to their school and friends?

[53] No.

4) The availability (including affordability) of alternative accommodation for each spouse and their dependants.

[54] The respondent resides at the Property. The claimant has indicated that she attends at the Property on a regular basis, but limits her time there because she believes the respondent is unstable and may be violent towards her. She states that she sleeps at the residence she recently rented. The vast majority of her belongings remain at the Property.

[55] Neither party has dependants that need be considered with respect to this factor.

[56] There is no convincing evidence that alternative accommodation is not available for both parties. Indeed, if the Property is sold, both parties could have access to significant funds to assist them in obtaining new accommodation.

5) The emotional condition of the spouses.

- [57] Both parties acknowledge that they do not get along. They do not trust each other. The claimant fears that the respondent may become violent. The respondent states that the claimant has called the police on at least nine separate occasions since the parties separated (respondent's second affidavit, para. 71). It is likely these problems impact the emotional condition of both spouses.
- [58] A delay of sale of the Property would only prolong those emotional problems. The parties would be best served by resolving the matters in issue between them and moving on to the next stage of their lives. The Property is the main financial connection between them and is one of the main, if not the main, reason they interact.
- 6) External Economic Factors (e.g. a declining market)
- [59] The only information on this issue is the respondent's indication that he has been advised by his realtor that "the real estate market is softening and values are starting to decline". This favours selling the Property at this time. The Property is a family asset. The objective in selling a family asset is to maximize its return, so both parties will receive as much as possible from the asset.
- 7) Wasting of the asset.
- [60] There is no evidence the asset is wasting. It is a relatively new occupied house on premises that are in active use.
- 8) The capacity of the parties to maintain the asset.
- [61] The parties are assisted in maintaining the Property by rental payments the respondent receives for two rental suites on the Property. The respondent's November 23, 2021 Form 8 financial statement indicates those rental payments total \$3,075 per month. The claimant has deposed that the rent payments pay the mortgage on the Property (claimant's second affidavit, para. 50).
- [62] The claimant is permanently partially disabled and has a very limited income stream. The respondent receives pension income. Both have indicated on their Form 8 financial statements that they have ongoing expenses well in excess of their income.
- [63] If there was a disruption in the rent payments or significant unexpected expenses for the Property, it seems unlikely that either party would have funds available to take on the mortgage payments or pay significant expenses.
- [64] Although the parties are able to maintain the Property now, the situation must be regarded as tenuous.
- 9) Potential prejudice to either party

- [65] If the order for sale of the Property is refused, the claimant would be prejudiced as she would have to survive on very limited income and would have to continue to deal with the respondent on matters relating to the Property, which would likely be to her emotional detriment. The claimant also faces potential prejudice if the decline in Property's value suggested by respondent's realtor occurs, as it would reduce her lifetime capital.
- [66] If the order for sale of the Property is granted, the respondent would be prejudiced as he would lose his residence and the place his business, Lot Masters, operates from. However, this result is inevitable. The real prejudice is that he would have to move out sooner than he may wish. This prejudice must be viewed in light of the fact that the respondent has remained on the Property for more than seven months since the deadline the parties consented to for him to buy-out the claimant's interest in the property passed on December 2, 2021.
- [67] The prejudice to the claimant if the order for sale of the property is refused outweighs the prejudice to the respondent if the order is granted.
- [68] On considering the factors that apply, the order for sale of the Property sought by the claimant should be granted.
- [69] The claimant seeks an order that she have sole conduct of sale of the Property. The respondent would prefer that the parties have joint conduct of sale.
- [70] Sale of a property typically involves a series of practical decisions that have to be made in order to ensure that the Property is properly marketed.
- [71] The claimant would be motivated to obtain the highest value available for the Property. It is the store of her lifetime capital. She would also be motivated to move expeditiously on the sale as she receives limited income.
- [72] The respondent has shown a strong desire to delay sale of the property. It is concerning that he did little or nothing with respect to the buy-out option since the December 2, 2021 deadline under the November 15, 2021 consent order and yet seeks further delay.
- [73] The parties do not get along with each other. It seems unlikely that would change if they were to have to cooperate on matters relating to the sale.
- [74] In addition, the stance taken by the respondent in his second affidavit suggests that his animosity toward the claimant is so great that it is very unlikely he could work with her on the sale of the property. In that affidavit, he disputes or outright denies virtually all factual matters the claimant set out in her affidavit. This shows a focus on his fight with the claimant and no real desire to find common ground on any matters.

- [75] Conduct of sale of the Property should proceed in an efficient, timely manner. The respondent has shown that he wants to delay the process. He has also demonstrated that it is highly unlikely that he would be able to work in a collaborative manner with claimant to achieve a sale. It would not be wise to burden the pragmatic steps that will have to be taken with respect to the sale with the respondent's propensity for delay and conflicts that would likely arise between the parties.
- [76] The claimant will have sole conduct of sale of the Property.
- [77] The application at Part 1, para. 2 of the claimant's notice of application seeks an order that would provide for an interim distribution of family assets, to fund legal fees for this proceeding. The amount suggested is a \$200,000 payment to each party, or such other amount as the court deems appropriate. The funds would be paid from the proceeds of the sale of the Property.
- [78] The application for an interim distribution of family property is pursuant to s. 89 of the FLA.
- [79] An applicant seeking an interim distribution of funds under s. 89 must demonstrate that:
- a) An advance is necessary to mount a challenge to the other spouse's position in the family law dispute on a level playing field; and
 - b) The advance will not jeopardize or be harmful to the other spouse's interests.
- McKenny v. McKenny, 2015 BCSC 1345 at paras. 57-58.
- [80] In *Chung v. Harrison*, 2018 BCSC 1258, at para. 13, the court described the nature of this remedy as follows:
- [13] Relief under s. 89 is extraordinary and must be assessed carefully. Its overriding purpose is to assist an economically disadvantaged spouse to access justice. *McKenny* at paras. 56-57 and *I.F. v. R.J.R.*, 2015 BCSC 793 at para. 192.
- [192] The blunt purpose of s. 89 is to assist economically disadvantaged spouses to access justice in matrimonial disputes; it is meant to help level the litigation playing field that is so often skewed when one spouse controls all or the majority of the wealth and assets. Application of s. 89 calls for a purposive interpretation, where the need of the applicant spouse to receive an interim distribution and the potential entailing harm to the other spouse are evaluated contextually with an eye on the larger objectives endorsed by the FLA.
- [81] The claimant has provided the following estimate of the legal fees she anticipates she may incur in order to advance her position in this case:
- a) Preparing for and attending an examination for discovery of the respondent: \$10,000-15,000;
 - b) Preparing for and attending mediation, including fees that would be charged by the mediator: \$20,000-25,000;

- c) Retaining experts and consultations with opposing counsel and experts regarding reports: \$20,000-30,000;
- d) Preparing requests for disclosure of documents and information and considering the respondent's responses to the disclosure requests: \$2,500-7,000;
- e) Responding to requests for disclosure of documents and information made to the claimant and obtaining documents from non-party record holders: \$2,500-5,000; and
- f) Preparation and attendance at a five day trial: \$100,000-120,000.

[82] The evidence on this application indicates that the claimant does not have the funds to pay the anticipated legal fees unless the Property is sold. The evidence also shows that the respondent very likely does not have access to funds to pay similar legal fees for his side of the case.

[83] Counsel for the respondent did not seriously challenge the claimant's calculation of the anticipated legal fees for this case. He did however suggest that the full fees may not be required as he is optimistic the case may settle, perhaps as a result of a mediation.

[84] Sale of the Property will, hopefully, prompt the parties to seriously engage in settlement discussions. It would be in their financial interest to settle the case, so as not to further deplete their assets by way of payment of legal fees for a trial. The amount of the interim distribution should reflect that the vast majority of cases settle without a trial and that this particular case should be amenable to settlement once the Property is sold.

[85] There will be an order that both parties are to receive an advance payment of \$150,000 from the net proceeds of the sale of the Property.

Orders

[86] The applications set out in the notice of application filed on behalf of the claimant on June 20, 2022, will result in the following orders:

- 1) The application at Part 1, para. 1 seeks an order that the former family residence be sold. It is granted. The claimant will have sole conduct of the sale. The parties have liberty to apply for directions relating to the sale, including approval of the sale. The net sale proceeds after all charges against the property and fees relating to the sale are paid are to be held in trust by counsel for the respondent.
- 2) The application at Part 1, para. 2 seeks an order that would provide for an interim distribution of family property to the both parties. It is granted. Both parties are to receive an interim distribution of family assets in the amount of \$150,000, to be paid from the net proceeds of the sale of the Property.

- 3) The application at Part 1, para. 3 seeks an order that would appoint an expert to prepare a joint valuation of the respondent's interest in Lot Masters. The respondent consents to that order. It is granted

[87] Are there submissions with respect to costs?

[SUBMISSIONS RE: COSTS]

- [88] The claimant was successful on the applications that proceeded. She is awarded costs of the application. Those costs are assessed at \$2,000 pursuant to the schedule in Appendix B of the Rules and are payable by the respondent to the claimant at the conclusion of his litigation.

"Master Vos"

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