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CANADA / JUDGMENT

## Stano v. Stano

2014 BCSC 1677

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COURT

Supreme Court of British Columbia

DECIDED

5 September 2014

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2014 BCSC 1677 Stano v. Stano

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Stano v. Stano,

2014 BCSC 1677

Date: 20140905

Docket: E121236

Registry: Vancouver

Between:

Eva Stano

Claimant

And:

Ivan Stano

Respondent

And:

Katia X Stano

Respondent

by Counterclaim

Before: The Honourable Mr. Justice Grauer

Reasons for Judgment

The Claimant appearing on her own behalf:

Eva Stano

Counsel for the Respondent:

Susan G. Label

The Respondent by Counterclaim appearing on her own behalf and as Agent for the Claimant:

Katia Stano

Place and Date of Trial:

Vancouver, B.C.

December 9-13, 16-18, 2013

April 23-24, 2014

July 2-3, 2014

Place and Date of Judgment:

Vancouver, B.C.

September 5, 2014

## INTRODUCTION

- [1] Like many family law cases, this one involves a family that has known tragedy and is suffering deep pain. Unfortunately, more than most families, their pain has been exacerbated by regrettable, but seemingly irremediable, misperceptions, misunderstandings and misapprehension. This has led to the utter destruction of relationships and a lengthier and more adversarial contest than would appear to have been justified.
- [2] From this, the following two principal issues arise.
- [3] The first is the spousal support, both retroactive and ongoing. The respondent husband concedes his obligation to pay spousal support from this point on, but has paid nothing since separation and maintains that in the circumstances no order for retroactive support should be made.
- [4] The second and more contentious is whether the gratuitous transfer by Mr. and Mrs. Stano of their only real asset, a condominium apartment, to their daughter Katia Stano a little over two months before separation was an outright gift, or is held by her on a resulting trust for one or both of her parents. If the latter, then it falls to be decided how that asset should be divided. The equity in the condominium is approximately \$300,000.

## GENERAL COMMENTS

- [5] This family, as will be seen, faced and overcame a number of obstacles together as life proceeded. In 2004, Mrs. Stano had to face the trauma of a diagnosis of breast cancer, followed by two separate mastectomies. Then in May 2008, their son George (Mr. Stano's stepson) tragically died of a drug overdose at the age of 37. Mrs. Stano never recovered from the emotional damage this caused.
- [6] The subsequent loss of her marriage of 40 years was yet another terrible blow to her psyche. In the result, she engaged in behaviour that she professes not to regret, but is nevertheless regrettable, including smearing dog feces on her husband's car door handle, stalking her husband, and giving false evidence on discovery because, she said, she was irritated by the lawyer's questions.
- [7] At trial, Mrs. Stano seemed unable to appreciate that I could not heal her emotional wounds, but could only deal with the legal consequences of the breakdown of her marriage. Her attention was focused on the emotional aspects of what had happened to her, rather than on the legal ramifications. Her viewpoint was sometimes irrational and at all times highly subjective.
- [8] On the issue of the transfer of the condominium to her daughter, Mrs. Stano allied herself with Miss Stano, taking the position that it was a gift. Given her lack of any other assets or any means of earning income, this left her in an exceedingly vulnerable position and led me to question whether she was fully able to appreciate where her interests lay. Accordingly, I insisted that she obtain independent legal advice, which, she told me, she did.
- [9] All three members of the family were unsophisticated with respect to financial matters. This led to a good deal of misunderstanding. By way of example, Mrs. Stano complained bitterly that her husband had maliciously falsified her income tax returns (prepared by their accountant) prior to their separation to show a relatively low income in the range of \$5,000 when in fact she believed she was earning more like \$40,000. This was income generated by a beauty salon business Mrs. Stano operated. She simply could not understand, or would not accept, the difference between gross income and net income, and the fact that the accountant had so arranged matters not to falsify her earning capacity at her husband's direction, but rather to minimize the income tax she had to pay.
- [10] In these circumstances, I found it impossible to rely on Mrs. Stano's evidence unless it was firmly supported by other evidence. In any conflict between her evidence and that of Mr. Stano, I prefer Mr. Stano's evidence. It was much less subjective, unimpaired by emotional overlay (although he was certainly emotional), and consistent with contemporaneous documentary evidence.

**BACKGROUND**

- [11] The claimant, Eva Stano, is 60 years old. Her husband, the respondent Ivan Stano, is 62. They first met in their home town of Prague, Czech Republic, as teenagers. Mrs. Stano had a brief first marriage which produced George, who was born in December of 1971.
- [12] Mr. and Mrs. Stano married on November 15, 1973. Their daughter, the respondent by counterclaim Katia Stano, was born on April 19, 1974. She is now 40.
- [13] The Stanos lived and worked in Prague for a number of years. Mrs. Stano trained to be an esthetician, and worked in that field, while Mr. Stano worked as a labourer and carpenter. They decided together to leave what was then Czechoslovakia, and while on a holiday in what was then Yugoslavia in 1982, they fled to Italy with their two children as refugees.
- [14] Mr. Stano has a brother, Joseph, who left Czechoslovakia in 1968 after the Soviet invasion, and ended up in Vancouver. Joseph Stano sponsored the Stanos for immigration to Canada, and they arrived in Vancouver as landed immigrants in 1984. Initially, they had the benefit of an allowance from the federal government, and took English classes for which the government paid.
- [15] Quite soon after their move to Vancouver, Mrs. Stano started working, doing manicures and pedicures. It took Mr. Stano a little longer to find work, and eventually he decided, with his wife's support, to start his own business in the field of construction and renovation. They also took on the management of the apartment building to which they had moved.
- [16] Both Mr. Stano and Mrs. Stano worked hard, and they were able to buy a condominium in the West End. They sold it, and bought and sold one more before ending up with the condominium at issue in this action, on Nicola Street. They owned that property jointly until, under circumstances to be explored below, they transferred the condominium to their daughter on January 19, 2012.
- [17] The Nicola Street condominium was their only asset in Canada, apart from some personal belongings.
- [18] Mr. and Mrs. Stano also jointly own two assets in Prague (the "Prague assets"): an apartment presently occupied by Mrs. Stano's brother rent-free; and the shares in a co-op in Prague that carry with them the right to occupy an apartment. Those shares came from Mrs. Stano's parents, and her mother still lives in the apartment attached to those shares, also rent-free.
- [19] There was no admissible evidence concerning the value of the Prague assets.
- [20] In 2007, Mrs. Stano bought her own salon, with her husband's support, and the family help to get the space ready. She operated that business until declining health led to the decision to sell it. Throughout her career as an esthetician, Mrs. Stano supported her husband in his business by recommending him to her clients who needed help with renovation or construction projects.

[21] The sale of the salon business completed at the end of November, 2011, and was the trigger for conflict that ultimately led to the transfer of the condominium, and the end of the marriage when Mr. Stano left on April 1, 2012.

## DISCUSSION

### 1. Spousal support

[22] The principal question here concerns what income Mr. Stano earned over the years since separation, and what level of income should be used for ongoing support.

[23] Mrs. Stano and Miss Stano both sought to challenge Mr. Stano's evidence about his past income, suggesting that he must have been hiding income. The evidence does not support their suspicions. I accept Mr. Stano's evidence, which is consistent with the documents, that his taxable income has been as follows:

Year

Amount

2007:

\$30,640

2008:

\$7,790

(this was the year of George's passing)

2009:

\$20,098

2010:

\$10,613

2011:

\$17,893

2012:

\$22,680

2013:

\$31,157

[24] I also find no evidence that, since separation, Mr. Stano has been deliberately unemployed or underemployed.

- [25] Mr. Stano submits that the fairest way to determine his ongoing support obligation would be to take the average of his three most recent years' earnings given the variations from year-to-year: see s. 17(1) of the Federal Child Support Guidelines ("FCSG"), which provide the starting point for the determination of income in accordance with the Spousal Support Advisory Guidelines 2008 ("SSAG") (see §3.3.2, and *CEC v SWC*, 2013 BCSC 1879 at paras 43-48). The average of his last three years' earnings is \$24,000.
- [26] The FCSG also mandate a careful review of the expenses which are deducted from gross income to produce a net income. The object in both instances is to arrive at a fair determination of the annual income in question. I do not find Mr. Stano's deducted expenses to yield a net income that unfairly reflects his total income under section 16 of the FCSG.
- [27] Mr. Stano submits that his wife and daughter deliberately sought to impair his income earning ability, and that I should take this into account in assessing his income and exercising my discretion concerning retroactive support.
- [28] There can be no doubt that, rather incomprehensibly, Mrs. Stano and Miss Stano took steps that could reasonably be expected to have the effect of reducing Mr. Stano's ability to earn income in his field of construction and renovation. Mrs. Stano bitterly complained about him and what she perceived to be his betrayals and transgressions to former clients of hers who had been the source of projects for Mr. Stano. Miss Stano sent a blistering email to one of the persons who employed Mr. Stano complaining about what she perceived to be his dishonesty, unreliability and treachery. She explained that she did this in an attempt to reach out to her father, presumably with a view to provoking a response from him. That may well have been her intention, but it is difficult to see these actions as more than spite on both their parts.
- [29] I do not, however, see these events as relevant to the issue of spousal support, and there is no evidence that would allow me to conclude that they in fact had the causative effect of reducing his income.
- [30] Mr. Stano argues that I should make no order for retroactive spousal support. He submits that any order concerning 2012 would be based upon his 2011 income, which is below the income level at which, in accordance with the SSAG, support should commence. Any order concerning 2013 would be based upon his 2012 income which is only slightly above that floor, and, in Mr. Stano's submission, would result in a hardship.
- [31] The argument of hardship is based upon the proposition that, deprived of a place to live and his only asset, as well as his automobile (which Mrs. Stano kept), Mr. Stano had to go into deeply into debt to cover his living expenses, his legal expenses and to obtain a vehicle so that he could work. Mrs. Stano, on the other hand, has continued to live in their condominium, and has not had to go into debt.
- [32] In this regard I note that Mr. Stano did have the advantage of one asset after he left: \$30,000 received from the settlement (after separation) of a personal injury claim.

- [33] As noted, Mr. Stano paid Mrs. Stano nothing after he left. She had to turn to social assistance and the Canada Pension Plan. Another deep but persistent misunderstanding arose in this regard. Mrs. Stano has complained widely that, as another example of her husband's perfidy, he deliberately failed to pay Canada Pension Plan premiums in relation to her income, while paying them in relation to his own, as a result of which she was unable to get a CPP disability pension after separation. Miss Stano made the same accusation in various emails.
- [34] In fact, as the relevant documents indicate, that was not the case. There were other difficulties with Mrs. Stano's disability pension application which had nothing to do with Mr. Stano, and a disability pension was ultimately awarded. The result is that Mrs. Stano has been living on a monthly CPP disability pension of \$730.07, supplemented by social assistance of \$176.35, for a total of \$906.42 per month. The SSAG make it clear (\$6.2) that social assistance is not to be considered income for the purposes of calculating spousal support. The CPP pension, however, does constitute income.
- [35] I accept without hesitation that Mrs. Stano is unable to work and cannot possibly be expected to become economically self-sufficient. The fact remains that Mr. Stano's earning ability is limited, and there is very little money to go around. As limited as it is, I am not satisfied that Mr. Stano's income should be reduced to the average of the last three years for the purposes of calculating ongoing support. On all of the evidence, I consider that his prospects have improved, particularly in relation to opportunities in the film industry. I find that his 2013 income fairly reflects what will be available to him over the next few years.
- [36] I conclude that, in all of the circumstances, it would be appropriate for Mr. Stano to pay retroactive spousal support for the years 2013 and 2014 only, at the low end of the range given the relatively low income involved (\$31,157). Ongoing support should be based upon that 2013 income, again at the low end of the range (see the discussion in Chapter 11 of the SSAG). In the result, Mr. Stano will pay spousal support to Mrs. Stano of \$700 per month retroactive to January 1, 2013, and ongoing.
- [37] Mr. Stano shall provide Mrs. Stano with copies of his Canada Revenue Agency Notices of Assessment each year upon receipt. In my view, this is not a case in which a review should be ordered, but rather the parties should be left to apply in the event of a material change in circumstances, whether based on the amount of Mr. Stano's income, his retirement, or other such matters.

## 2. The condominium

### (a) The transfer

- [38] As noted, Mr. and Mrs. Stano gratuitously transferred their only real asset, the Nicola Street condominium, to Miss Stano on January 19, 2012. Miss Stano maintains that this was a gift to her from her parents. She is supported in this by Mrs. Stano. Mr. Stano takes the position that the transaction resulted in Miss Stano holding the property in trust for her parents, and seeks its return and equal division between him and Mrs. Stano. He bases his position on

lack of intention to make a gift, unconscionability, and in the further alternative, unjust enrichment.

- [39] The parties do not dispute that in such circumstances, a rebuttable presumption arises in law that a gratuitous transfer to an adult child results in a trust in favour of the parents: *Pecore v Pecore*, [2007] 1 SCR 795; and *Kerr v Baranow*, [2011] 1 SCR 269. Accordingly, the onus falls upon Miss Stano to prove that a gift was intended.
- [40] Consideration of this issue requires us to return to the conflict that arose following the sale of Mrs. Stano's salon business at the end of November, 2011.
- [41] It began with Mrs. Stano's concern about how she and her husband would survive financially now that she would no longer be working and bringing in a second income. This led her to invite Miss Stano to assist them in a review of their financial circumstances.
- [42] Mrs. Stano testified that her husband had had sole control over financial matters and had made all financial decisions up to that point. She simply brought home cash or cheques from her business and handed it all to him. According to her, he dealt on his own with all such matters as financing and debt management.
- [43] Mr. Stano testified that this was not so, that he always involved her in decisions concerning refinancings and kept her informed of matters. Their accounts were all joint.
- [44] There is no doubt, although she denied it, that Mrs. Stano attended with her husband at the bank on several occasions to sign mortgage documents and loan documents, but she says that she never paid any attention to anything she may have signed that way.
- [45] I accept that Mrs. Stano left the family finances up to her husband. I find that she participated as necessary, and preferred to participate no further.
- [46] In any event, notwithstanding her signature on all documents relating to borrowing, Mrs. Stano professed to be shocked at the amount of debt registered against the condominium. The debt, consisting of a mortgage and a secured line of credit, totaled approximately \$300,000. According to Mrs. Stano, she had expected it to be in the range of \$140,000. She and her daughter did not see how Mr. and Mrs. Stano could continue to live on Mr. Stano's income without going further into the line of credit and increasing the debt, and they were not at all satisfied with Mr. Stano's explanations about how money had been spent, and the information he provided.
- [47] In fact, it is not difficult to see how that debt grew given the Stanos' modest incomes and the expenses they faced. Sums in the range of \$40,000 had been spent on rehabilitation and treatment costs for George. The costs of obtaining, renovating and opening the salon business were around \$60,000. There were assessments and renovation costs for the apartment approximating \$50,000, and substantial sums had been lent to Miss Stano, who works in the local film industry as a costume designer.

- [48] Nevertheless, I find that Mrs. Stano and Miss Stano both blamed the precariousness of Mr. and Mrs. Stano's financial circumstances on Mr. Stano, accusing him of incompetence and mismanagement. Among the changes they demanded was control over the finances. Mr. Stano was to sever the joint accounts and pay half of what was in them to Mrs. Stano, and the line of credit was to be frozen. Feeling under siege, Mr. Stano agreed to these conditions.
- [49] Before the end of 2011, the debt was paid down to approximately \$200,000, where it has remained. This was accomplished by applying the proceeds of the sale of the salon business (approximately \$60,000), Miss Stano repaying debt, and using additional cash on hand.
- [50] Part of the process of reviewing their financial circumstances was considering what options were available to increase income. On December 22, 2011, the family left for a Christmas vacation in Hawaii. They preferred to travel at that time ever since George's death. Before and during that vacation, Mrs. Stano and Miss Stano developed plans for a new business which would involve Mr. Stano making windows for apartments and houses, something that he had done before moving to Canada. The idea was that this was a business that involved work Mr. Stano could perform, and which could be run administratively by Miss Stano, with Mrs. Stano assisting in marketing. Mr. Stano would do the work, but would not be in charge of the money.
- [51] Mr. Stano saw no potential in this. He was well aware that in any such business, he would be up against much larger outfits that manufactured their own windows, so that he would be unable to compete in terms of price. He would have to buy his windows from them. The logic of this seemed to escape Mrs. Stano and Miss Stano, and indeed, Mrs. Stano, at least, seemed to become somewhat obsessed with the idea of this new business. All of this was superimposed upon pre-existing issues between her and her husband, and culminated in a discussion in which Mr. Stano objected to the concept, and Mrs. Stano told him that if he was not willing to cooperate in this venture, he could pack his bags and leave.
- [52] Miss Stano was scheduled to fly back to Vancouver on either January 2 or 3, 2012, while Mr. and Mrs. Stano were to stay longer. In the tension of the situation, Mr. Stano did not want to stay in Hawaii, and so he and Mrs. Stano flew back with Miss Stano. The parties all seemed to agree that it would be better if Miss Stano stayed with Mrs. Stano in the Stanos' apartment, while Mr. Stano went to stay on his own at Miss Stano's (rented) apartment.
- [53] Both Mrs. Stano and Miss Stano testified that the discussions concerning the transfer of the apartment to Miss Stano took place after their return from Hawaii and before January 11, 2012, when a contract of purchase and sale was signed. Miss Stano testified that the concept originated with a telephone call from her mother asking her to help them by accepting transfer of the condominium. Mrs. Stano testified that she made this call after she and her husband had gone for a walk some days after their return, and she became concerned that he was attempting to borrow more money from the line of credit. She was very anxious to prevent any increase in their debt.

- [54] Miss Stano could not recall just when this conversation took place, but believed that it was a few days after their return. She understood from her mother that her father had tried to increase the debt against the apartment. In order to avoid this, her mother wanted the condo transferred to her. She took steps to make this happen, contacting her accountant, who put her in touch with a mortgage advisor and a notary. An appraisal was carried out by Canada Trust, indicating a value of \$570,000.
- [55] Later in the trial, to the surprise of all, documentation was produced that indicated that Miss Stano had in fact contacted Canada Trust about mortgage financing for the transfer of the condominium on January 4, 2012, immediately after their return from Hawaii. This seriously undermined both her and her mother's explanations of how this concept came about. Since the subject had not been raised in Hawaii, I find that the concept must have been discussed between Mrs. Stano and Miss Stano while Mr. Stano was living at his daughter's apartment. I am satisfied that he took no part in it.
- [56] But even before this information was made available, I found that I was unable to accept Mrs. Stano's and Miss Stano's evidence that the transaction was intended to be an outright gift. Quite simply, it made no sense.
- [57] The purpose of the gift, they said, was to help Mr. and Mrs. Stano out of their financial predicament. How the transfer of equity worth \$300,000 out of their hands and into their daughter's was going to accomplish this was never satisfactorily explained.
- [58] Miss Stano sought to persuade me that she was doing her parents a favour by taking this debt off their hands, even though they were to continue to pay the interest costs of the mortgage, and the strata fees. She did not seem willing to accept that most people would be happy to take on a debt of \$200,000 if it came with an asset worth \$570,000, and would not view it, as Miss Stano did, as a sacrifice. The only way this would benefit her parents (or constitute a favour from her) would be if in fact they retained beneficial ownership, but were prohibited from further 'wasting' of the asset through borrowing. That her parents were to continue paying the mortgage interest and strata fees is consistent with the expectation that they were intended to retain beneficial ownership.
- [59] I found Miss Stano's attempts to explain how her acceptance of this "gift" would help her parents in their financial difficulties both self-serving and unconvincing. Her own evidence was frequently inconsistent with the concept of gift. She testified, for instance, at one point that the transfer of the condominium to her was not really a gift until her parents were gone.
- [60] Mrs. Stano's evidence was also inconsistent and, I find, revisionist. It was she who dealt with Miss Stano in setting up the transaction, and I find that Miss Stano's evidence is reflective also of Mrs. Stano's approach.
- [61] In terms of the parties' intentions at the time of the transfer, the consistent thread in the evidence of both Miss Stano and Mrs. Stano, was, and I find, that the real purpose of the transfer was to prevent Mr. Stano from being in a position to have further access to the

equity until the matter of ongoing employment had been resolved. His borrowing in the past was in their view the principal cause of their current financial difficulties. Miss Stano was clear that this was not to interfere with her parents' ability to live there, and of course the parents were to be responsible for the ongoing costs.

- [62] Mr. Stano testified that he considered over the period in question that his marriage was crumbling before his very eyes. He had been criticized by his wife and daughter for financial mismanagement, incompetence and dishonesty. He had been told to pack his bags and leave if he did not want to pursue what he viewed as a doomed enterprise. He understood that his wife and daughter were suspicious about his use of money and that they wanted to prevent any further borrowing. He urged his wife to undertake counseling with him, but she refused because of the cost. When the plan of transferring the apartment to his daughter was put before him by his wife, he resolved to agree to do whatever was necessary to attempt to save his marriage, and sign whatever documents he was given. It was his belief that once matters had settled down, and their finances had straightened out some, then the property would come back. It was, after all, all they had.
- [63] I accept Mr. Stano's evidence. It is consistent with the evidence of the other parties in so far as they highlight the concern of his continued borrowing, and describe the circumstances that afflicted the family at that time. The transfer was to be a temporary tool to stabilize the couple's finances, not a gift that would obliterate their finances. It is the only way to make sense of the action that Mr. and Mrs. Stano took. Making an outright gift of the asset was the least helpful option.
- [64] Remaining insistent that the transaction was a gift, Miss Stano submits that the problems with her parents' marriage had nothing to do with her. She was doing her best to help them, and the idea of a "gift" did not come from her. She points to the contract of purchase and sale documentation signed by both parents, all of which she prepared herself (including an addendum specifically stating that "Ivan and Eva Stano are gifting this property to our daughter, Katia Stano"), and to the transfer documentation her father signed before notaries public, which included a deed of gift form, and an acknowledgment of "independent legal advice" from a notary in the office other than the one who took their signatures on the transfers. All of these, she asserts, were signed by her parents freely and rebut the presumption of a trust.
- [65] I disagree. I find that Mr. Stano was under a great deal of duress, being pressured by both his daughter and his wife. I am also unable to accept that Mrs. Stano was thinking the matter through clearly, and understood the transaction the same way that Miss Stano says she did. I am further satisfied that the views of both Mrs. Stano and Miss Stano have been coloured by the subsequent breakdown of the marriage and what they considered to be Mr. Stano's unforgivable abandonment of them - leading them both to actions that have been uncommonly vindictive.

- [66] In these circumstances, I do not find the documents signed by Mr. Stano to be a fair reflection of his intention. Moreover, the "independent legal advice" he received did not approach the quality or scope of advice that he required given his position. At no point, for instance, were the potential consequences in the event of marriage breakdown considered. Yet that was an obvious issue. In these circumstances, the brief consultation with an independent notary did not, I find, constitute independent legal advice: see, for instance, *Friedl v Friedl*, 2008 BCSC 1222.
- [67] I conclude not only that Miss Stano has failed to rebut the presumption of a resulting trust, but also that the evidence, taken as a whole, establishes on a balance of probabilities that the transfer was not intended to be an outright gift. Rather, it was intended to be a transfer to Miss Stano of the legal title only, without consideration (hence "gift"), but with Mr. Stano and Mrs. Stano retaining their beneficial interest.
- [68] It follows that Miss Stano holds title to the condominium in trust for her parents.
- [69] Two questions remain to be decided: first, what expenses may Miss Stano deduct when accounting to her parents? Second, how is the equity to be divided between Mr. Stano and Mrs. Stano in accordance with the Family Relations Act, RSBC 1996, c 128?
- (b) Expenses
- [70] As noted, it was contemplated at the time of the transfer that Mr. and Mrs. Stano would continue to pay all of the expenses relating to the ownership of the condominium, including financing costs, strata fees and municipal taxes. They did so in February and March 2012, but then Mr. Stano left and contributed nothing further. Since he left on April 1, 2012, Miss Stano has had to pay those amounts herself, with assistance from Mrs. Stano in the form of rent.
- [71] There is no doubt that, as trustee, Miss Stano is entitled to be reimbursed for the costs incurred in maintaining the trust asset. She submitted a list of expenses incurred up to the end of the trial. Counsel for Mr. Stano objected to its admissibility on the ground that the underlying banking documentation only went up to a certain date (due to the exigencies of trial preparation) and therefore could not support the rest.
- [72] Counsel for Mr. Stano also submitted that I should deny Miss Stano reimbursement intended to restore her to her position at the start, because Mr. Stano cannot be put back in that position. In this regard, Ms. Label observed that while the market value of the condominium was assessed at \$570,000 when Miss Stano sought financing, it is currently assessed at only \$500,000, representing a loss of equity of \$70,000, while the debt has been increased by \$5,000. Ms. Label argued that Miss Stano should have restored the condominium to her parents as soon as they separated and it became clear that they had nothing else; instead, she fought her father's claim every step of the way.

- [73] I reject this argument. While it is true that Miss Stano did not prevail at trial, the reality is that she found herself in an invidious position given the dispute between her parents, and I find nothing untoward or improper in the circumstances about her wish to submit the issue to the court for resolution. In any event, there is no evidence upon which I can find a loss of equity. The January 2012 assessment of \$570,000 was evidence only of what Canada Trust considered when they decided to lend the necessary funds to Miss Stano. It was simply hearsay evidence otherwise, and not admissible to prove the market value of the condominium at that date.
- [74] Moreover, Miss Stano is not to be deprived of reimbursement simply because of timing. Accordingly, if the parties are unable to agree, I direct a reference to the registrar to assess what expenses Miss Stano has incurred that are properly attributable to the preservation of the asset, less rent received. Such expenses would include financing costs (TD line of credit), strata corporation fees and assessments, and municipal taxes. BC Hydro costs may be offset against rent, but Miss Stano may not deduct the cost of items such as the new showerhead. She may deduct the transactional costs paid to the notaries. Miss Stano must also account for any additional borrowing that increased the line of credit. She may not take into account medical and other expenses she paid on behalf of her mother. Those are to be resolved between her and Mrs. Stano.
- (c) Apportionment
- [75] At the conclusion of the evidence portion of the trial, I discussed with the parties how argument should proceed. Somewhat to the dismay of Mr. Stano's counsel, I suggested to Mrs. Stano and Miss Stano that they should be prepared to argue for a reapportionment of the condominium asset in favour of Mrs. Stano pursuant to section 65 of the Family Relations Act in the event I found a trust. I was, of course, intending to highlight for all parties an issue that I thought should be addressed, and was not deciding it.
- [76] Section 56 of the Family Relations Act provides for an equal division of family assets. Under section 65, the onus falls upon Mrs. Stano to establish that an equal division would be unfair having regard to the matters set out in section 65(1).
- [77] On the facts of this case, given a forty-year marriage and the contribution of both spouses to the acquisition of the asset, equal division would seem appropriate: see, for instance, *Murchie v Murchie* (1984), 39 RFL (3d) 385 (CA), *SBM v NM*, 2003 BCCA 300, and *Davison v Davison*, 2006 BCSC 777.
- [78] The question here revolves around subparagraph 65(1)(e), being the needs of each spouse to become or remain economically independent and self-sufficient.
- [79] As I have already found, Mrs. Stano is no longer capable of earning a living and has no other assets, other than the Prague assets, the value and utility of which would appear to be minimal. Apart from this one Canadian asset, she will be dependent upon spousal support and the Canada Pension Plan.

- [80] At the same time, it must be recognized that Mr. Stano's income earning capacity is limited both in amount and duration. His work is physical in nature and he is approaching retirement age. Like Mrs. Stano, he has no savings, investments, or pension other than the Canada Pension Plan. Unlike Mrs. Stano, he has incurred a considerable amount of debt. He will also be paying spousal support.
- [81] In these circumstances, I conclude that Mrs. Stano has failed to demonstrate that an equal division of this asset would be unfair. It will therefore be divided equally.
- [82] In the event I came to this conclusion, Miss Stano expressed a wish to explore the possibility of buying out her father's interest with her mother's assistance. I consider that to be reasonable. The parties should first determine the net value of the parents' equity after accounting for all of Miss Stano's expenses and any increased borrowing as discussed above, based upon the agreed appraised market value of \$500,000. From Mr. Stano's 50% interest in the remainder, Mrs. Stano is entitled to take the retroactive spousal support owing to her from January 1, 2013, through September 1, 2014. Mr. Stano will then be entitled to payment of the balance. This should be accomplished within 60 days of the date of this judgment, failing which the apartment should be sold. If the parties run into unforeseen difficulties in effecting this part of my order, they are at liberty to apply.
3. Other matters
- (a) The Prague assets
- [83] Turning to the Prague assets, I understood Mr. Stano to have no objection to the co-op shares relating to the apartment presently occupied by Mrs. Stano's mother, from whom Mrs. Stano inherited the shares, being transferred into Mrs. Stano's name alone. This court has no jurisdiction over the asset, but it does have jurisdiction over Mr. Stano, and in the circumstances, I find it appropriate to direct that he take all necessary steps to effect the transfer of his interest in those shares to Mrs. Stano. The interests in the other apartment will fall to be dealt with by agreement or in accordance with the laws of the Czech Republic.
- (b) Contents
- [84] Mr. Stano seeks artwork acquired by the parties during their marriage consisting of one stone carving, half the family photos, and the return of a watercolour painting that he says his son George gave to him.
- [85] Mrs. Stano denies any desire for material things, but maintains that Mr. Stano took with him a good deal of their belongings when he left, and submits that if he wants anything more, I should not give it to him.

[86] In the circumstances, I direct that Mr. Stano may choose one stone carving, but otherwise the contents are to remain with Mrs. Stano. I direct Mrs. Stano to allow Miss Stano access to all the family photos. Mr. Stano may arrange with Miss Stano to attend with her to look at the photos at any mutually agreeable time, but they will not be removed from Miss Stano's control.

(c) Divorce

[87] On the basis of the evidence of Mr. Stano and Mrs. Stano, and the marriage certificate entered into evidence before me, I find that the parties were married in Prague, Czechoslovakia, on November 15, 1973. I find that they separated on April 1, 2012, and have remained living separate and apart since then. There has accordingly been a breakdown of the marriage, and there is no prospect of reconciliation. I am satisfied that there has been no collusion or condonation. Notwithstanding the absence of a Clearance Certificate, I pronounce an order for divorce to take effect 31 days from the date of this judgment.

(d) Restraining order

[88] The trial of this action commenced on December 9, 2013, but did not complete in the allotted time. When we adjourned on December 18, 2013, Mr. Stano asked for an interim order restraining his wife and daughter from harassing him. This was based on evidence that Mrs. Stano, in particular, had been stalking Mr. Stano, and on emails sent by Miss Stano of the sort already described. I asked Mrs. Stano and Miss Stano each to agree that they would stay clear of Mr. Stano and not harass him. They both undertook to do so, and so I did not pronounce the requested order.

[89] I did, however, pronounce such an order on January 22, 2014, on Mr. Stano's application. He had been having problems with vandalism to his car. On the evening in question, he was told that someone had splashed paint on his car and when he went out to investigate, he saw a vehicle in the alley that he thought might contain his wife and daughter, but which left when he approached. He followed, and did discover daughter's vehicle on a side street adjacent to his apartment building.

[90] Miss Stano and Mrs. Stano both denied having anything to do with the vandalism. They explained that they happened to drive down Hemlock Street, near Mr. Stano's apartment, on their way home to the West End from visiting friends in the Cambie area. That would indeed be an appropriate route. But what this did not explain was why they turned off Hemlock Street to the alleys and side streets around Mr. Stano's apartment. They attributed that to a lapse of judgment but continued to deny causing any damage.

[91] I did not make then, and do not make now, any finding on the issue of whether Mrs. Stano and Miss Stano vandalized Mr. Stano's vehicle. That may be the subject of a separate claim. I denied Mr. Stano leave to make such a claim in this action. But it was clear that notwithstanding the undertakings they gave me, Mrs. Stano and Miss Stano went out of their way to drive to Mr. Stano's apartment, for no justifiable reason. Given the history, I

pronounced an order restraining them from communicating with or contacting Mr. Stano directly, and from attending at or near his residence, property, place of business or place of employment.

- [92] Mrs. Stano and Miss Stano now ask to be released from that restraining order. It is certainly to be hoped that once of this litigation is complete, an order of this nature will be unnecessary. I am not, however, satisfied that the parties have yet reached that point. Accordingly, I extend that order to June 4, 2015, a further nine months from the date of this judgment, at which time it will expire. Neither Mrs. Stano nor Miss Stano will be considered in breach of this order if approached or contacted by Mr. Stano, or otherwise if acting in fulfillment of any terms of the orders I have pronounced in this judgment. Mr. Stano will be at liberty to apply to renew it should circumstances so warrant, no doubt accompanied by a claim for the special costs of the application.

4. Costs

- [93] As they requested, the parties are at liberty to apply concerning the costs of this litigation in view of the findings I have made and any additional information, such as offers to settle, of which I am unaware.

"GRAUER, J."

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