

CANADA / JUDGMENT

Vigeant v. Vigeant

2015 BCSC 2105

COURT

Supreme Court of British Columbia

DECIDED

18 November 2015

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2015 BCSC 2105 Vigeant v. Vigeant IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Vigeant v. Vigeant, 2015 BCSC 2105 Date: 20151118 Docket: 4064 Registry: Fort Nelson Between: Margaret Marie Vigeant Claimant And Ronald Lucien Vigeant and R.L.V. Holdings Ltd. Respondent Before: The Honourable Mr. Justice Jenkins Reasons for Judgment Counsel for the Claimant: H. Dale Counsel for the Respondent: N. Bauder Place and Date of Trial: Fort St. John, B.C. June 22 - 26, 2015 Place and Date of Judgment: Fort Nelson, B.C. November 18, 2015

- [1] After 42 years of marriage, the personal parties to this family case separated in the summer of 2012. The issues at trial were the division of family assets and debt as well as a claim for spousal support by the claimant.
- [2] Also in the summer of 2012 the parties attended a mediation in an attempt to resolve all issues between them which resulted in a separation agreement ("the Agreement") which purported to be effective August 1, 2012.
- [3] The notice of family claim issued in September of 2013 originally included an application to set aside or vary the Agreement and have the assets divided equally. The respondent counterclaimed for an order that the Agreement be enforced. Subsequently, in August of 2014, the respondent advised he was no longer resisting the claimant's application to set aside the Agreement and was "seeking an equal division of family assets and a determination and allocation of family debts". The trial of this matter then proceeded on the basis of seeking an equal division of family assets. However, the respondent continued to oppose the application of the claimant for spousal support which claim she had previously discharged and released in the Agreement.
- [4] An order for divorce was granted in 2013.
- [5] After reviewing the factual background, I will firstly discuss the family assets and the positions of the parties in relation to the same before turning to a determination of entitlement to spousal support and if appropriate, the quantum of spousal support.

- [6] The parties are not at odds over the goal of an equal division of family assets. The challenge in this case is how to best achieve a fair, equitable and hopefully equal distribution of the family assets. The claimant seeks a compensation order for one-half the value of the remaining assets that have not been distributed whereas the respondent seeks an orderly sale of the family assets and equal distribution of the net proceeds. Factual Background
- [7] The claimant and respondent are both in their late 60's. They married in 1970 and shortly after their marriage moved from Alberta to Fort Nelson, BC where they have resided ever since. They have two adult children.
- [8] The claimant is a licensed practical nurse and upon moving to Fort Nelson worked as a nurse at the Fort Nelson Hospital while the respondent worked for a construction company. The claimant gave birth to a son in 1971 and soon after went to work at the construction company being managed by her husband where she worked full time around the availability of babysitters. Mr. Vigeant entered into an agreement to purchase the construction business in or about 1973. The business was purchased in the name of the defendant, R.L.V. Holdings Ltd. ("RLV") which had been incorporated by Mr. Vigeant, who has at all times been the sole shareholder of RLV. Mr. Vigeant continued to manage RLV and the claimant worked at various jobs in the family business while she was also engaged in raising their children.
- [9] In 1983, RLV, by the actions of Mr. Vigeant, sold the construction business which resulted in RLV receiving net proceeds of sale of between \$500,000 to \$600,000. A portion of the proceeds from the sale of the construction business was then invested in a jewelry store in Fort Nelson which was operated by the claimant. The jewelry store business was liquidated after approximately two years as the respondent realized the store was not profitable. After the sale of the jewelry store, Mrs. Vigeant returned to working as a nurse at first at a medical office in Fort Nelson and then at the Fort Nelson Hospital.
- [10] In or around 1985, RLV purchased and operated several other businesses in the Fort Nelson area including a company known as Gear-O-Rama, a Husky Truck Stop also known as the 5th Wheel Truck Stop, a recreational vehicle park and an oilfield equipment rental business. Mrs. Vigeant worked at the truck stop and convenience store on weekends and occasionally on other locations while continuing in her position as a nurse at the Fort Nelson hospital. In 1995 RLV leased out the truck stop and associated businesses with the result that the truck stop was sold in 2000 for a net price of \$990,000.
- [11] With the proceeds of the sale of businesses, in 1996 RLV purchased Crown land in the Fort Nelson area on which RLV developed and sold a subdivision known as Black Bear subdivision which too was profitable.

- [12] In 2001 the parties agreed on the purchase of 7.5 acres of land known as 6600 Old Alaska Highway. On that lot, in 2002, RLV assembled a large pre-fabricated house which became the family residence and remained the family residence until the separation of the parties in 2012. On the same land RLV built a shop from which RLV operated an oilfield equipment rental business and, on occasion has rented out portions of the shop to other businesses.
- [13] In or about 2001 or 2002, from profits generated from the development of the Black Bear subdivision, RLV purchased Crown land consisting of 153 acres adjoining the lot on which the family residence was located with the intention of developing another subdivision, which eventually came to be known as "Cooper Country Estates". It was Mr. Vigeant's intention to develop that land into a suburban residential subdivision of 19 acreages. That land was subdivided and serviced with the intention of selling the lots. Seven of the lots remained unsold as of the date of trial. The equity remaining in those unsold lots constitute the major remaining asset of RLV.
- [14] In June of 2012 the respondent advised the claimant that he was seeking a divorce. Even though the relationship between the parties had not been close for several years which included allegations by the claimant of the respondent drinking to excess, the claimant was shocked that the respondent would seek a divorce.
- [15] Within a month of Mr. Vigeant's declaration, specifically on July 19, 2012, the parties attended a mediation which resulted in the Agreement. The Agreement was executed by the respondent on July 26, 2012 and the claimant on September 26, 2012. One term of the Agreement was that the claimant would leave the former family home, contrary to her wishes. One of the major concerns of the claimant arising from the Agreement was a lack of complete disclosure by the respondent of his financial affairs as well as the finances of RLV. More particularly, the claimant complained of a failure of the respondent to disclose a shareholders loan by the respondent to RLV under which the respondent was owed over \$1.5 million, various bank accounts, the prior disposal of equipment by RLV and tax information which had been given to RLV and the respondent advising him that he could withdraw funds from RLV on the shareholders loan without tax implications to himself.
- [16] Although the respondent is no longer seeking to enforce the Agreement (Ex. 2, p. 15), the parties did partially implement some of the provisions of the Agreement. Included in the Agreement were the following provisions:
- a) The respondent disclosed an income of \$36,000 "as a contractor by RLV" and the claimant's annual income as a nurse was stated to be \$40,000.
 - b) An acknowledgement by the parties of their financial independence and a mutual waiver of "interim or permanent maintenance", i.e. spousal support.

- c) An acknowledgement that RLV was a family asset and that the claimant, in exchange for a payment by the respondent of \$500,000 by September 30, 2012 and a further payment of \$667,000 by September 20, 2014 in exchange for the claimant relinquishing "all claim to the shares and assets of RLV . . . except as set out in this Agreement".
- d) The claimant, could remain residing in the family home until she could take occupancy of a new home while the respondent was to live in the "shop" located adjacent to the family home.
- e) Each party would retain their own "monies, savings, investments, insurance, pensions and the like . . . and keep any and all annuities or pensions, Retirement Savings Plans of every nature whatsoever that teach has in his or her name".
- f) A clause to the effect that each had received independent legal advice.
- g) The schedule of the respondent's assets and liabilities included a valuation of RLV of \$3 million less tax obligations and the respondent's Canada Pension Plan.
- h) The schedule of the claimant's assets and liabilities included an RRSP of \$156,000, her B.C. Municipal Pension estimated at \$144,000 and 3 alpacas.
- i) Both parties indicated they had "nil" liabilities.

[17] On September 30, 2012, the claimant received \$500,000 as contemplated by the Agreement. On November 1, 2012, the claimant purchased a townhouse in Fort Nelson at a cost of approximately \$375,000. The payment of \$667,000 as contemplated by the Agreement has not been made to the claimant as this proceeding, in which the claimant originally sought to set aside the Agreement, was commenced before the payment of \$667,000 was due. It is also significant that the payment to the claimant of \$500,000 was free of taxation, that payment having been made from the respondent's shareholders loan.

[18] This proceeding was commenced by the claimant on September 24, 2013. During examinations for discovery and following document disclosure by the respondent including his credit card statements, it was disclosed that the respondent had been spending, according to the claimant, approximately \$6,000 per month on travel, cruises, alcohol, gifts, spa treatments and other luxury items and testified on discovery that the money for those expenditures had been "probably money from the shareholders". The respondent was referring to a shareholders loan of RLV which, the claimant alleges, had not previously been disclosed by the respondent.

[19] Considering all of the evidence, it appears as though the respondent went on a fairly lengthy "spending spree" as was disclosed in his examination for discovery and again in cross-examination at trial. When asked at trial why he withdrew \$341,000 from the RLV in October 2013, he responded he took out the money "to have some fun" and that "I was advised that as sole shareholder I have full access to the loan". As of October 31, 2014 the shareholder's loan had been reduced from over \$1.5 million to \$97,140. Of the reduction in the shareholder's

loan, \$500,000 had been paid to the claimant as required by the Agreement. Also, the reduced amount of the shareholders loan took into consideration payments received by Mr. Vigeant from the purchasers of Lots 3 and 9 of Cooper Country Estates amounting to \$297,000.

- [20] Although the excesses of the respondent in spending were questionable and unnecessary, it has been the choice of the respondent to spend funds derived from RLV on luxury items which are to be charged as advances to the respondent from the family assets and will be considered as advances from the family assets in the eventual distribution. The respondent's excesses should not and will not affect the entitlement of the claimant to her fair share of family assets.
- [21] There is disagreement between the parties as to whether or not the respondent was forthright with the claimant in discussing the affairs of RLV. The claimant testified that the respondent did not disclose relevant matters and the respondent replies to the effect that the claimant did not want to know the company's finances and wanted nothing to do with the company's various business ventures. The respondent was clearly an entrepreneur whereas the claimant was more comfortable knowing she would be receiving a steady, consistent income. She was not a risk-taker as was the respondent. However, the business ventures of RLV planned by the respondent did, over several years, provide both parties with significant financial rewards and a comfortable lifestyle. The respondent was clearly hopeful that a successful development and sale of the Cooper Country Estates subdivision would result in a cushion which would provide financial security for the parties through their retirement; however, the sale of the lots in Cooper Country Estates has not been nearly as successful as had been contemplated.
- [22] On September 15, 2014, the claimant obtained an order for the preparation of a joint expert report to value the shares of RLV. That order resulted in the report of Chris Goodburn which was issued in June of 2015 and which valued the shares of RLV as between \$2,670,000 to \$3,070,000 as of August 1, 2012. (Ex. 5, Tab 4) The Goodburn report included appraisals by others of equipment owned and recently disposed of by RLV and the appraised value of the lots remaining in the name of RLV plus other monies owed by the purchasers / renters of two of the lots in Cooper Country Estates. Other relevant opinions and findings of Mr. Goodburn include the following:
- a) The revised financial statements of RLV as at October 31, 2014 indicated a shareholder loan outstanding of \$97,140.
 - b) Mr. Goodburn found that three of the lots in Cooper Country Estates were subject to varying agreements including a "rent to own" agreement for Lot 9 which obligates the renter to make payments of \$560 per week from March 1, 2011 on a total price of at most \$600,000 with interest at 1.9% per annum. The appraised value as of May 2015 was \$625,000 and the "buyout" required the renter to pay a further \$600,000 including \$60,000 HST.

- c) Regarding Lot 3, the purchasers owed RLV approximately \$296,000 as of October 31, 2014.
 - d) Lot 17 was sold in May of 2015 for the price of \$604,000.
 - e) Some of the payments due to RLV on Lots 3 and 17 were paid to the respondent.
 - f) RLV had been receiving rental income from tenants, for shop rental and previously on the rental of oil field equipment and miscellaneous other sources.
 - g) The respondent had not been paid a salary by RLV.
 - h) Mr. Goodburn had obtained an equipment appraisal which opined on the value of remaining equipment and equipment that had been sold by the respondent in recent years.
 - i) At page 10 Mr. Goodburn stated: "I have reviewed the company's operations and concluded that the company does not generate significant maintainable earnings and is essentially a holding company. Thus, I have adopted an asset based approach to valuation".
 - j) \$105,000 remains in trust with RLV's solicitors as security for a claim of lien and a Builders Lien action commenced against RLV the outcome of which is uncertain.
- [23] I concur with the above statement of Mr. Goodburn in that an asset based approach to valuation is appropriate since the income of RLV is erratic and most recently at lower levels. Income is almost totally dependent upon the ability to sell the remaining lots in Cooper Country Estates and when such sales may take place, both of which are unknown.
- [24] Further, the real estate appraiser whose valuations and comments were relied upon by Mr. Goodburn is of the opinion that as of the date of the appraisal, ie. December 2014, the "the real estate market is not considered to be as heated as it was one-year prior and overall real estate markets and prices within the area [of Fort Nelson] are stabilizing". Earlier in his report, the real estate appraiser had acknowledged that "the improvement in the local economy was directly attributable to high oil and gas prices within world markets" which contributed to the increased real estate sales in the three years prior to 2014. From the stabilization recognized within the real estate appraisal it would appear as though the real estate market in Fort Nelson has not improved, may well have declined, and faces an uncertain immediate future.
- [25] In considering any reapportionment of family assets in this case, it is important to remember that it is the shares of the company, RLV, which constitute the most significant family asset. RLV is a party to this proceeding and both counsel have approached this matter as if the assets of RLV are effectively family assets. Position of the Claimant Regarding the Apportionment of Family Assets
- [26] Firstly, the claimant seeks an order that the valuation date for the family assets should be July 19, 2012, the date the Agreement was apparently reached following the mediation, although the claimant did not sign the Agreement until later in September 2012 and although the Agreement is not being relied on to divide the assets. Section 87 of the Family

Law Act, S.B.C. 2011, c. 25 applies and states: Valuing family property and family debt 87
Unless an agreement or order provides otherwise and except in relation to a benefit under a pension plan,

- a) the value of family property must be based on its fair market value, and
- b) the value of family property and family debt must be determined as of the date
- i. an agreement dividing the family property and family debt is made, or ii. of the hearing before the court respecting the division of property and family debt

- [27] The claimant seeks a compensation order for one-half of the value of the shares of RLV. She cites the decision of Justice Huddart in *Kowalewich v. Kowalewich* (1998), 50 B.C.L.R. (3d) 12 (C.A.) which dealt with compensation orders as a means to adjust the division of assets under s. 66(2)(c) of the Family Relations Act, R.S.B.C. 1996, c. 128. I agree with the claimant when she submits that the courts should strive to ensure that the division of family assets is not merely equal in a legal sense but that the actual benefit received by each spouse is also equal as was considered in *Kowalewich*. Such an approach is eminently sensible.
- [28] The claimant further cites the decision of *Weintz v. Weintz*, 2014 BCCA 118 in support of her application for a compensation order under s. 97 of the FLA, which replaced s. 66 of the FRA under which *Weintz* was decided. In *Weintz*, the major assets were the shares of the family holding corporation in which the husband held all of the voting shares and the wife the non-voting shares. The parties had sought an equal division of family assets under the FRA and the trial judge had calculated the amount of the compensation order payable by the husband to the wife under which the wife would retain the former family home and the husband would own all of the shares of the company. The trial judge then granted the husband an order under s. 66 of the FRA to either acquire the wife's interest in the company and pay the compensation order or to apply for an order for the sale of the shares (or winding up of the company if no sale was forthcoming) which would then necessitate an order for sale of the family home.
- [29] The Court of Appeal determined that the option given by the trial judge to the husband left a result unfair to the wife. The wife argued before the Court of Appeal that the trial judge should have simply ordered the husband to pay the compensation order of \$600,000 upon her transfer to the husband of the wife's interest in the family home and the husband's transfer of the shares to his wife. The Court of Appeal in discussing alternatives available under s. 66 of the FRA and after referring to *Kowalewich* stated at para. 38:
- [38] These decisions seem to suggest that the courts should strive to: (i) ensure that the total family assets are maximized, which will generally involve maintaining the business as a going concern; and (ii) ensure that division of the family assets is not merely equal in a legal sense but that the actual benefit received by each spouse is also equal.
- [30] The Court of Appeal continued at paras. 41, 45 and 49:

- [41] With respect, I am of the view the trial judge erred in granting the husband the option of either buying the wife's shares or having the shares sold because of a lack of evidence from the husband as to his ability to pay the \$600,000 compensation order. The need for a compensation order to equalize the division of assets always existed given the parties' agreement that the wife could retain the former matrimonial home.
- [45] In this case, the onus was on the husband to provide the trial judge with the necessary evidence of any inability to pay a compensation order that might be made to adjust the division of assets. Based on the evidence and the positions of the parties advanced at trial, a compensation order must have been within the reasonable expectation of the husband. Moreover, the trial judge acknowledged that this was the most satisfactory remedy in the circumstances. I agree with that assessment.
- [49] It is my view that the wife should not have to face ongoing and undoubtedly costly litigation as a result of the husband's decision not to provide the judge with the necessary evidence to finalize the division of assets at the conclusion of the trial. Based upon the wife's proposal that she retain the former matrimonial home, to which the husband had agreed, the only practical disposition of the shares in the company was to allocate them in specie to the husband with a \$600,000 compensation order to the wife to adjust the division. With respect, the final order based on the evidence and submissions at the trial would have brought certainty and finality to the litigation. In these circumstances, I am of the view the trial judge was clearly wrong in failing to divide the major assets as proposed by the wife and in not compelling the husband to make the \$600,000 compensation order to adjust the division.
- [31] The claimant further submits that I should award the family home to the claimant and that such an award would be "tantamount to a compensation payment because it is readily liquidated". The appraised value of the property and improvements at 6600 Old Alaska Highway was \$1,025,000 as of November 12, 2014. Position of the Respondent Regarding Apportionment of Family Assets
- [32] The respondent does not agree that a compensation order is appropriate in these circumstances and submits that the fairest means of apportioning family assets is a sale of all family assets (with some exceptions which will be referred to below) held by them as of June 2012 when Mr. Vigeant declared that he wanted a divorce and the parties began to wind up their relationship. A sale would include a sale of all of the assets of RLV. As assets are sold, family debt, including the debt of RLV can be paid from the proceeds of sale with the net amount being distributed equally between the parties. Although a sale may take time, possibly years, the process being in place and being implemented would maximize returns and an orderly winding up of the affairs of RLV and the parties.
- [33] RLV's expenses exceed its income on a regular basis and it is clear that RLV will not be continuing on as a going concern and needs to be liquidated. The only revenue will be the sale of the remaining seven lots and payments due to RLV on account of Lots 3 and 9 pursuant to the agreements with the purchasers / tenants of those lots. RLV is also not in a

position to finance the funds needed for a compensation order. If a compensation order were granted now, Mr. Vigeant submits, it is highly unlikely that he would be able to pay any amount on such an order, which is a logical conclusion based upon the financial situation in which he and the company are found. There is simply no liquidity which would allow for a compensation order to be made.

- [34] The claimant submits that awarding her the former family residence would be tantamount to a compensation order as that land and the buildings located on the land could be readily liquidated. There is no evidence before the court to the effect that the former family residence and the property, i.e. 6600 Old Alaska Highway, could readily be sold, at least any more readily sold than the other undeveloped lots in Cooper Country Estates. Family Assets Assets of RLV
- [35] The respondent submits that all remaining family assets, which include the assets of RLV, must be sold in order that there be an orderly and fair reapportionment of assets as between the parties. I concur with the submission. RLV is in debt and has ongoing financial obligations which will only accumulate over time if the remaining real estate is not sold. There are ongoing costs and insufficient revenue to finance the equity or to retain the properties for any extended period of time.
- [36] Likewise, a compensation order as sought by the claimant based upon an equal distribution of the value of the remaining lots is simply not realistic. In order to raise the funds for a compensation order prior to sale of the lots would require Mr. Vigeant to borrow funds, which is not possible due to the income uncertainties he would be faced with in the future. Mr. Vigeant testified that the \$250,000 which he borrowed from his bank in March 11, 2013 upon the security of the property at 6600 Old Alaska Highway on which the former family home is situate was the extent of any borrowings available to him from his bank. As well, so long as RLV continues to own the remaining seven lots, expenses including bare land strata fees, taxes, insurance and other costs to maintain the lots are being incurred by RLV and the source of funds to make those payments is uncertain and dependent upon sales. Finally, the amounts the properties will realize is uncertain given the current market.
- [37] In order to calculate the value of the shares of RLV it is necessary to compile the assets and the values attributed to those assets at trial as per s. 87(b)(ii) of the Family Law Act. As there is no agreement dividing the assets in the face of both parties' disavowal of the Agreement, s. 87(b)(i) does not apply. The following chart summarizes those assets and their value and is taken in part from the respondent's "Scott Schedule" with some variations and includes the respondent's proposals in respect of the same: Assets and Liabilities Particulars Value Comments 1. Former Family Residence 6600 Old Alaska Highway, Fort Nelson, BC \$1,025,000 as at November 12, 2014. Appraised value To be listed and sold forthwith. Net proceeds to be realized by RLV for global division between the parties 2. R.L.V. Holdings Ltd. - Vacant land holdings Lots 7, 8, 10, 11, 13, 18 and 19 of Cooper Country Estates. Values as per appraisals \$777,000 (combined) as at November 12, 2014. Appraised Value To be listed forthwith. Net proceeds realized by RLV for ultimate division equally between the parties 3.

R.L.V. Holdings Ltd. - Net sale proceeds Sale of Lot 17, #17-6550 Old Alaska Highway, May 1, 2015 \$490,161.37 Cash in trust to be used firstly to pay RLV overdraft and balance to remain with RLV for division equally between the parties via global division of family assets 4. R.L.V. Holdings Ltd. - Equipment Equipment outlined in R.L.V. Holdings Ltd. Valuation Report (Heitman Appraisals) \$87,950 as at November 12, 2014 To be sold forthwith via Richie Bros. Auction or Michener Allen Auctions. Net proceeds divided equally 5. Amounts owing R.L.V. on Lots 3 and 9 of Cooper Country Estates Lots 3 and 9 of Cooper Country Estates Lot 3 - \$296,000 Lot 9 - \$540,000 Upon payment by purchasers / renters to be paid as part of global division between the parties together with any loan / rental payments made to date purchase 6. Ron Vigeant, Shareholder Loan to R.L.V. Holdings Ltd. Accumulated since company started \$97,139 as at October 31, 2014 \$1,409,816 as at August 1, 2012 (Separation Date) Divided equally/divided via global equalization of family assets 7. R.L.V. Holdings Ltd., liabilities Current bank overdraft (North Peace Savings & Credit Union), Accounts Payable, Corporate Tax Payable - Does not include shareholder loan or deposits (\$357,684) as at October 31, 2014 To be paid out with sale proceeds from Lot 17 8. Legal Claim -Money in Trust \$105,000 Value uncertain pending litigation - result uncertain. Eventually part of global distribution between the parties

- [38] The total estimated value of the assets of RLV net of the overdraft with North Peace Savings & Credit Union and the balance of the shareholders loan is \$3,060,566.
- [39] Since separation of the parties, the claimant has received a payment of \$500,000 as of September 2012. Since the date of separation, the respondent has received \$690,775.88 as payments from RLV on account of the respondent's shareholders loan. The latter sum includes an adjustment for payments made by the purchasers / tenants of Lots 3 and 9 received directly by the respondent and now accounted for in the accounting of RLV as a payment by RLV on the shareholders loan. In order to equalize the distribution of RLV assets and liabilities, the proper approach is to effect an unequal division of the assets under s. 95 of the FLA to the extent that the first \$190,755.88 realized in cash is to be paid to the claimant. Further payments are to be shared equally after tax. Current Financial Situation of the Claimant
- [40] The claimant's current annual income as a Licensed Practical Nurse at the Fort Nelson Hospital is \$63,050. Adding her CPP income and minimal interest income the claimant's total income is \$72,986 with annual expenses of \$52,732 according to her F8 Financial Statement made in June of 2015. She is currently 66 years old and is anxious to retire as she has worked for many years and is encountering health issues due to the physical and emotional stresses of her nursing duties. Her desire to retire is understandable in the circumstances.

- [41] The claimant owns the townhouse in Fort Nelson currently assessed at \$336,400 which was purchased and improved by the claimant with the funds received by her in September of 2012 as contemplated by the Agreement. As the townhouse was purchased with settlement funds it has not been listed as a family asset.
- [42] She maintains an unsecured line of credit, the balance of which fluctuates but is less than \$20,000.
- [43] The jewelry retained by the claimant from the liquidation of the jewelry business should be appraised and sold with the proceeds to be shared equally.
- [44] The assets and liabilities of the claimant, exclusive of the value of her one-half share of RLV shares are as follows: Assets and Liabilities Particulars Value Comments 1. Financial assets including RRSP Reflects corrected total from F8 of June 2015 \$164,284 2 Jewelry in safety deposit box Unknown Unknown To be valued and shared equally as part of global division of assets 3 Debts Line of credit, Visa and Mastercard (\$13,319) 4 Claimant's vehicle \$20,000 5 Municipal Pension Plan Guaranteed life annuity \$112,668 To be valued and shared equally 6 Time share liability - Green Mountain Shared equally (\$1,500) 7 CPP credits Family asset unknown To be valued and shared equally 8 Household items/ furniture Family asset unknown Retained by claimant
- [45] The above list of the claimant's assets does not include household items purchased for her new residence from the \$500,000 distribution from RLV in September 2012 as the distribution to the claimant and the advance of funds to the respondent have been accounted for separately. Current Financial Situation of the Respondent
- [46] In his most recent F8 Financial Statement, the respondent deposed to an income of \$62,460 which sum included employment income from RLV, pension income and what is referred to as his shareholder equity from RLV. Mr. Vigeant does receive benefits from living expenses paid by RLV including the costs of maintaining the former family residence in which he has resided since Ms. Vigeant moved into her townhouse in November 2012 and costs of transportation and vehicles which is also borne by RLV. Mr. Vigeant is 67 years of age and like Ms. Vigeant, is anxious to retire after many years of hard work and community involvement. His desire to retire is also understandable. He is not in a position to start a new career or business unless he attains promptly a substantial portion of the family assets which may allow him to invest in future ventures, health willing. His future is very uncertain. Should sales of the remaining lots be completed in the near future, his income could be very substantial but likely only in the short term. On the other hand, if the real estate market in Fort Nelson is not robust, several years could pass before the lots are sold and Mr. Vigeant's income may be very limited, likely to his CPP benefits. Other than his nominal pension income, Mr. Vigeant has no other immediate source of income other than through RLV generating revenue. Assets and Liabilities Particulars Value Comments 1. Harley Davidson Family asset \$5,000 2. GMC Tahoe Family asset \$30,000 3. 1990 Kensi Mobile Home Family asset \$33,250 4. Household items/ furniture To be retained Unknown 5.

Teamsters pension Family asset \$11,880 To be shared equally 6. Bank accounts- Canadian Family asset \$23,519 7. U.S. funds Family asset \$66,739 (U.S.) To be shared equally 8. CPP credits Family asset Unknown To be shared equally 9. Time share liability Family asset (\$3,000) To be shared equally Decisions on Reapportionment

- [47] Regarding the assets of RLV, I accept the submission of the respondent to the effect that the assets of the company need to be sold to provide liquidity for both parties and that a compensation order as sought by the claimant is not practical or possible due to the financial situation of the respondent and the lack of certainty regarding the income of RLV. It is apparent that the respondent would not be able to borrow sufficient or any funds to be able to fund a compensation order. I also do not accept that the former family residence and shop known as 6600 Old Alaska Highway should be transferred to the claimant in lieu of a compensation order. That property is going to be sold in any event, either by the company or by the claimant if I were to grant the order sought by her. The assets are to be sold as noted in the "comments" column of the table in para. [37] above. Sale of any assets of RLV are subject to the consent of both parties failing which sales are to be made with court approval.
- [48] Taxes due as a result of the withdrawal of funds from RLV will be shared equally between the parties.
- [49] The parties will each retain their household items and furniture, which are not valued.
- [50] CPP credits for each, the claimant's municipal pension plan and the respondent's Teamsters pension are to be shared and equalized between the parties according to Part 6 of the Family Law Act.
- [51] Responsibility for the Green Mountain time share liability, which I understand to be approximately \$3,000, is to be shared equally by the parties. If there are ongoing responsibilities arising in respect of the time share, the costs and any benefits will continue to be shared by the parties.
- [52] The jewelry retained by the claimant from the liquidation of the former jewelry store business is to be appraised and sold with the proceeds to be shared equally. If either party wishes to retain any of that jewelry, the party retaining it will be responsible for paying the appraised value to the other. If any piece of jewelry is desired by both parties, it shall be sold and the proceeds distributed equally.
- [53] By my calculations, the family assets held by the claimant and not to be equalized or sold amount in value to \$170,965 and the family assets held by the respondent and not to be equalized or sold amount in value to \$91,769 for a difference of \$79,196, one half of which will be paid to the respondent by the claimant. Spousal Support
- [54] The statutory criteria for granting an order for spousal support under the Divorce Act is set out in s. 15.2(4): 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.

[55] The objectives of an order for spousal support are set out in s. 15.2(6): 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.

[56] As submitted by the claimant's counsel in her written submissions, when considering an award for spousal support the court must first determine entitlement, then quantum and finally duration.

[57] Counsel firstly referred to the Supreme Court of Canada decision in *Bracklow v. Bracklow* (1991), 44 R.F.L. (4th) 1 (S.C.C.) and the words of McLachlin J. (as she then was) regarding the factors to consider in applications for spousal support at paras. 35 and 36: 35 Moge, supra, sets out the method to be followed in determining a support dispute. The starting point is the objectives which the Divorce Act stipulates the support order should serve: 1) recognition of economic advantage or disadvantage arising from the marriage or its breakdown;; 2) apportionment of the financial burden of child care; 3) relief of economic hardship arising from the breakdown of the marriage, and 4) promotion of the economic self-sufficiency of the spouses: s. 15.2(6). No single objective is paramount; all must be borne in mind. The objectives reflect the diverse dynamics of the many unique marital relationships. 36 Against the background of these objectives the court must consider the factors set out in s. 15.2(4) of the Divorce Act. Generally, the court must look at the "condition, means, needs and other circumstances of each spouse". This balancing includes, but is not limited to, the length of cohabitation, the functions each spouse performed, and

any order, agreement or arrangement relating to support. Depending on the circumstances, some factors may look larger than others. In cases where the extent of the economic loss can be determined, compensatory factors may be paramount. On the other hand, "in cases where it is not possible to determine the extent of the economic loss of a dis-advantaged spouse . . . the court will consider need and standard of living as the primary criteria together with the ability to pay of the other party": *Ross v. Ross* (1995), 168 N.B.R. (2d) 147 (C.A.) at p. 156, per Bastarache J.A. (as he then was). There is no hard and fast rule. The judge must look at all the factors in the light of the stipulated objectives of support, and exercise his or her discretion in a manner that equitably alleviates the adverse consequences of the marriage breakdown.

- [58] In addition to Bracklow, our courts have relied on multiple occasions on the leading decisions of *Miglin v. Miglin*, 2003 SCC 24, *Moge v. Moge*, [1992] 3 S.C.R. 813, *Chutter v. Chutter*, 2008 BCCA 507, and others in setting out the three bases for entitlement to spousal support, i.e. compensatory, non-compensatory (or "needs") or contractual support. Contractual support is not in issue as there is no agreement in force.
- [59] Is the claimant entitled to spousal support on either a compensatory or non-compensatory basis, keeping in mind the guidance provided in *Moge*, quoted above? Compensatory support is premised on the notion that the cost of one spouse's lost economic opportunity as a result of a joint decision of the spouses should be borne equally by the spouses. Most typically, spousal support on a compensatory basis is granted when a couple decide to have a child or children which results in one of the spouses thereby forgoing his or her career opportunities. Has there been a sacrifice of one of the spouses for which he or she should be compensated? A spouse, after years of child care and caring for the family home while the other spouse pursues a career, is clearly disadvantaged should the couple separate due to having been out of the workforce for a lengthy period of time, lessening his or her opportunities to advance in their career and delaying the ability to be able to earn a greater income later in his or her life span.
- [60] The claimant submits that she is entitled to spousal support on both a compensatory and non-compensatory basis. The claimant continues to say in her written submissions that she is suffering from economic hardship:
- a) relative to when she was married to the respondent and
 - b) relative to the respondent.
- [61] Counsel for the claimant further submits the claimant's incomes over the years of the marriage were low with respect to the historical earnings of the respondent and that the family had benefited through expenses incurred by RLV, which benefited them. She submits those benefits are no longer available to the claimant.
- [62] The length of the marriage in this case, i.e. 42 years, is also a factor which would incline towards an award of spousal support on a compensatory basis.

- [63] The history of this relationship does not disclose a significant sacrifice on the part of the claimant which would entitle her to spousal support on a compensatory basis. It is true that for the most part the claimant, during the years when the children were young, was primarily in control of their care. However, the arrival of children did not keep the claimant from the workforce for any significant period of time. She soon returned to work and with the help of child care and the ability to work hours around persons able to care for the children, the claimant continued with her career with little interruption. She has worked as a nurse, both in a private medical clinic and at the Fort Nelson Hospital since the children were very young. She has carried on as a Licensed Practical Nurse and continues to reap the benefits of having continued her career throughout the marriage.
- [64] It is true that historically the income of the respondent has been much greater than that of the claimant as a result of his business ventures. However, the respondent's income in recent years has been lower than that of the claimant and his income is likely to remain lower than that of the claimant unless the remaining lots held by RLV are sold promptly, the net proceeds of which are to be shared equally after tax.
- [65] Both parties in this case have been and will continue to suffer from the breakdown of the marriage and the shortcomings of the development business in recent years in the Fort Nelson area.
- [66] The claimant makes reference to the opulent lifestyle of the respondent since the parties separated in 2012. There is no doubt that the respondent spent time in 2012 and 2013 "having fun", enjoying an expensive cruise, spending time in Arizona, buying gifts, attending spas and more. The respondent was reckless in his spending in that period of time; however, it was his choice to spend his funds from his shareholders loan in that manner and it is now apparent that he is not now and is highly unlikely in the near future to be able to afford such expenditures. His reckless spending of his share of the funds generated by the shareholders loan has not and will not deprive the claimant of support. The respondent is now in a much poorer financial straight than he would have been had he retained and invested funds from his shareholders loan. It was his choice, his mistake, and he will be paying the price.
- [67] Self-sufficiency of the parties is one objective of spousal support, but only when practicable. In considering what is practicable, the court must consider all circumstances, including age, gender, skills, education, opportunity for retraining and the realistic prospect of the recipient spouse finding a job enabling him or her to become self-sufficient: see *Tedham v. Tedham*, 2005 BCCA 502. Presently, and again subject to the sale of remaining property in Cooper Country Estates which will be divided between the parties, the claimant is more likely to be more comfortably self-sufficient than is the respondent.

- [68] Further, the law is clear that the goals set out in the Divorce Act may be achieved as between the spouses by the division of assets: see *Tedham*. The claimant is poised to receive significant equity through the sale of the assets listed above. These assets, representing the whole of the respondent's work and any contribution the claimant may have made, discourage a continuing claim on this ground.
- [69] I also note that during the marriage the parties maintained their finances separately, kept separate bank accounts, and kept saving separate. The exception would be that on occasion the profits of RLV would be shared as discussed above.
- [70] Regarding spousal support on a non-compensatory basis, the income of the claimant is currently significantly more than that of the respondent. Her expenses are much less than her current income. With the distribution of the assets of RLV, the claimant will be in a better position to retire than she is now, with the respondent in no better a position.
- [71] In conclusion, I find the claimant is not entitled to spousal support on either a compensatory or non-compensatory basis. The claimant has not demonstrated that her contributions to the marriage has impacted her earning capacity or that the division of assets is insufficient to meet her needs in the short or long term, and the respondent has not been shown to be in a financial position to alleviate any reduction in her standing of living since the breakdown of the marriage. Summary
- [72] I have determined as follows:
- a. The assets of RLV are to be divided unequally to the extent that the first \$190,755.88 realized in cash is to be paid to the claimant. Further payments and the tax liabilities incurred as a result of withdrawing funds from RLV are to be shared equally.
 - b. The assets of the parties are to be divided as outlined in the tables.
 - c. The parties will each retain their household items and furniture, which are not valued.
 - d. CPP credits for each, the claimant's municipal pension plan and the respondent's Teamsters pension are to be shared and equalized between the parties according to Part 6 of the Family Law Act.
 - e. Responsibility for the Green Mountain time share liability is to be shared equally by the parties. If there are ongoing responsibilities arising in respect of the time share, the costs and any benefits will continue to be shared by the parties.
 - f. The jewelry retained by the claimant from the liquidation of the former jewelry store business is to be appraised and sold with the proceeds to be shared equally. If either party wishes to retain any of that jewelry, the party retaining it will be responsible for paying the appraised value to the other. If any piece of jewelry is desired by both parties, it shall be sold and the proceeds distributed equally.

- g. The claimant will make an equalization payment of \$39,598 to the respondent to account for the value of family assets retained by her.
 - h. The claimant is not entitled to spousal support under compensatory or non-compensatory grounds.
- [73] The parties may deliver submissions in writing on costs which should be filed no later than 30 days after issuance of these reasons for judgment. "Jenkins J."
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