
CANADA / JUDGMENT

Welliver v. Hees

2016 BCSC 1837

COURT

Supreme Court of British Columbia

DECIDED

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2016 BCSC 1837 Welliver v. Hees

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Welliver v. Hees,

2016 BCSC 1837

Date: 20160624

Docket: E043541

Registry: New Westminster

Between:

Marianne Louise Welliver aka Marianne Welliver

Claimant

And

Eric Axel Hees aka Eric Hees

Respondent

Before: The Honourable Mr. Justice Butler

Oral Reasons for Judgment

Counsel for the Claimant:

Sonia Hayer

The Respondent:

Appearing In Person

Place and Date of Trial/Hearing:

New Westminster, B.C.

June 20-23, 2016

Place and Date of Judgment:

New Westminster, B.C.

June 24, 2016

- [1] THE COURT: These are my reasons for judgment following the trial of this matter. And as always when I do this orally, either party can order a copy of the transcript. If you do that, I reserve the right to amend it, but only in form, not in substance.
- [2] Marianne Welliver and Eric Hees began a marriage-like relationship in 1988. They separated on or before March 7, 2010. Over the following three years they divided most of their assets, including the net proceeds from the sale of their home. They also divided approximately 4,500 ounces of silver they had accumulated.
- [3] There are no children of the relationship, although Ms. Welliver had two children from a prior relationship, one or both of whom lived with the parties for about seven years.
- [4] While the parties were each employed in various jobs over the years, during most of their time together they operated small businesses which were the brainchild of Mr. Hees. In the past 15 years, his efforts have been focused on project management. He taught courses, developed materials for courses, and designed tools, including charts and post-it notes, to use in project management. After the separation, Ms. Welliver continued to work for a period of time for Plan-It Systems Inc. ("Plan-It"). The parties owned Plan-It equally. It was the focus of their business activities during the final years of their relationship. Ms. Welliver provided administrative services to Plan-It and Mr. Hees performed the work. This involved leading seminars on a project management system mainly for Priority Management Inc., an international project management company. Priority held the proprietary rights to the "system", made the arrangements with the clients, most of which were large multi-national companies, and arranged the seminars. Plan-It also sold some related products developed by Mr. Hees.
- [5] Throughout its operation, Ms. Welliver and Mr. Hees were paid by Plan-It as contractors. After the separation, and following a hiatus, Ms. Welliver continued to receive payments for her services from the company, as did Mr. Hees. Mr. Hees says the payments were made pursuant to an agreement reached between the parties to resolve their property and support issues. She disagrees with that characterization of the payments. She says she tried to negotiate a separation agreement with him but that the negotiations stalled over time. She says that Plan-It simply continued to pay her for services which she provided to the business which they jointly owned.

- [6] From the evidence presented at trial, it appears that Plan-It was never particularly successful. Its best year by far was 2011 when it generated revenues of \$178,000. In 2012, the revenues dropped to \$75,000. In early 2013, Mr. Hees advised Ms. Welliver that Plan-It could no longer pay her for administrative services and it stopped making any such payments. He effectively forced her out of participation in the business.
- [7] Since that time, Ms. Welliver has not worked, other than to provide childcare for her grandchildren and assistance to her son, who is a single father. Ms. Welliver is 64 years old, has no income and little or no retirement savings. She lives with her son in a 275-square-foot suite in his home. He parents his children for about 70 to 80% of the time. They require childcare when he is working or out of town. Ms. Welliver provides that care. She does not pay rent or receive payment for the services she provides. Ms. Welliver and her son say the value of the rent and utilities she receives is about \$800 per month.
- [8] Mr. Hees is 55 years old and also has little or no retirement savings. Both he and Ms. Welliver declared bankruptcy in 1992 and both made consumer proposals in February 2010. I have not seen Ms. Welliver's consumer proposal, but understand it parallels that of Mr. Hees. His consumer proposal shows debts of almost \$393,000 and assets of about \$342,000. Both parties were required to pay \$600 per month for five years, which represented a 21% recovery for the unsecured creditors. Both parties made those payments.
- [9] Mr. Hees lives with Terri Young, his new partner, in a townhouse which she owns. He has an agreement with her which requires him to pay half of the mortgage and household expenses. However, he says he has not been making the payments because of the very modest income he receives from his business activities. He continues to operate Plan-It and offers the same services which the company provided when Ms. Welliver worked with him. He says his annual income has ranged from a high of \$16,996 in 2010 to a low of \$10,675 in 2014. Mr. Hees has substantiated this through production of his personal tax returns and notices of assessment. He has also produced tax returns and financial statements for Plan-It, as well as a letter from his accountant confirming the corporate and personal incomes. Mr. Hees' average Line 150 income for the six years from 2010 to 2015 is only \$12,505.
- [10] This action was commenced on March 15, 2013, approximately two months after Mr. Hees told Ms. Welliver that Plan-It could not continue to make monthly payments to her. As the notice of family claim was issued a few days before the Family Law Act, S.B.C. 2011, c. 25, came into force, the Family Relations Act, R.S.B.C. 1996, c. 128, applies to the property division claims.
- [11] The pleadings filed by both parties sought division and reapportionment of the family assets including the family home. At trial, neither party took issue with the division of the major assets, that is their silver and the family home, which was effected between 2011 and 2013.
- [12] At trial, Ms. Welliver advanced the following claims to family property: a claim for her share of a GIC held by Plan-It; a claim for her share of a quantity of cash held by Mr. Hees in a safe; a claim to his rock collection; and a claim for reimbursement of expenses for the family

home. However, the main issue in this case is Ms. Welliver's claim for spousal support. Mr. Hees opposed the claim on the basis that the action was started more than three years after separation and that he never paid or agreed to pay spousal support. I should note that Mr. Hees' counterclaim also advances a claim for spousal support, presumably in the alternative, but this was not pursued at trial.

- [13] Mr. Hees has two defences to the spousal support claim. First, he says it is statute-barred because it was commenced more than two years after the parties were separated. Second, even if the action was commenced in time, his level of income is such that he owes nothing for spousal support as Ms. Welliver is equally capable of earning income.
- [14] Mr. Hees drafted his pleadings and represented himself at trial. At trial, he relied on the limitation provision in s. 198(2) of the Family Law Act, but his counterclaim refers, without section numbers, to the Family Relations Act, the Family Law Act, and the Divorce Act.
- [15] Ms. Welliver argues that the limitation period set out in the Family Law Act does not apply to limit her claim for spousal support. She relies on s. 198(5) and says the limitation period was suspended for a period of time when the parties were engaged in family dispute resolution with a family dispute resolution professional. Specifically, she says that the time should be suspended from June 2010 to late 2012. During that time, she says the parties were negotiating and finalizing possible settlement of their family claims based on advice she received from legal counsel. With that suspension of time (which is 18 to 20 months), the action, she says, was brought well within the two-year limitation. She also says that an annual income of \$100,000 to \$150,000 should be imputed to Mr. Hees and that he should pay spousal support at the mid-range for an indefinite time period.
- [16] These circumstances and arguments raise a number of issues. The issue which must be considered first is whether the two-year limitation period is a defence to the spousal support claim as advanced by Ms. Welliver. I will provide my analysis of that issue and then consider the remaining issues.

Issue 1: Is Ms. Welliver's claim for spousal support statute-barred by the limitation set out in s. 198(2) of the Family Law Act?

- [17] Part 7, Division 4, of the Family Law Act sets out the provisions relating to spousal support. If one spouse is entitled to support based on the objectives set out in s. 161, the support must be determined after consideration of the conditions, means, needs, and other circumstances of each spouse, including the length of the relationship, the functions they performed within the relationship, and any agreements between them. The objectives are the same as those set out in the Divorce Act. The limitation provision is set out in s. 198, the relevant portions of which include the following:

198 (1) Subject to this Act, a proceeding under this Act may be started at any time.

- (2) A spouse may start a proceeding for an order under Part 5 [Property Division] to divide property or family debt, Part 6 [Pension Division] to divide a pension, or Part 7 [Child and Spousal Support] for spousal support, no later than 2 years after,
- (b) in the case of spouses who were living in a marriage-like relationship, the date the spouses separated.
- (5) The running of the time limits set out in subsection (2) is suspended during any period in which persons are engaged in family dispute resolution with a family dispute resolution professional.

[18] The definitions in s. 1 of the Family Law Act include the following:

"family dispute resolution" means a process used by parties to a family law dispute to attempt to resolve one or more of the disputed issues outside court, and includes

- (c) mediation, arbitration, collaborative family law and other processes,

"family dispute resolution professional" means any of the following:

- (a) a family justice counsellor;
- (b) a parenting coordinator;
- (c) a lawyer advising a party in relation to a family law dispute;
- (d) a mediator conducting a mediation in relation to a family law dispute, if the mediator meets the requirements set out in the regulations;
- (e) an arbitrator conducting an arbitration in relation to a family law dispute, if the arbitrator meets the requirements set out in the regulations;

[19] There is no question that the parties are spouses. They lived together in a marriage-like relationship for 22 years. However, they separated, at the latest, in March 2010 and this action for spousal support was not commenced until three years after the date of separation. Accordingly, the question which arises is whether the running of the two-year limitation time period as set out in s. 198(2)(b) is extended because of the provisions of s. 198(5) or otherwise.

[20] Ms. Welliver described the history between the parties in some detail. This is a shortened version of the relevant parts of that chronology:

- a) When the parties separated, Mr. Hees took the chequebooks for Plan-It and stopped paying Ms. Welliver. He said they needed to manage on their own. She was in a difficult financial position, as she remained in the family home and had to make the mortgage payments. She cashed in some of her silver bars and got her sister to make an advance payment on the inheritance coming from her mother's estate.

- b) On May 9, 2010, she went to a lawyer for legal advice but did not like him. She told Mr. Hees she had seen a lawyer and he responded by saying he would never pay spousal support to her. On June 18, 2010, she received advice from a second lawyer and, based on that advice, sent an email to Mr. Hees on June 21, 2010. When she met with the second lawyer, she was advised of the limitation period for advancing a claim for spousal support.
- c) Ms. Welliver's intent in sending the email was to negotiate a settlement of their family dispute. The June 21 email set out three options for Mr. Hees to consider. She stated:

I have obtained good advice from another lawyer who stated that it is always to the advantage of the persons involved in the separation to find a way to be pro-active and find ways to be mutually supportive than it is to simply exercise their legal rights at any cost, both monetarily and emotionally, and I certainly agree with this advice.

- d) Ms. Welliver then set out three options from which to build the "actual Separation Agreement". She indicated that she preferred the first option.
- e) Option 1 was quite complicated but involved the parties continuing to work together in Plan-It; Ms. Welliver receiving the family home and buying out his equity with some of the silver bars (approximately \$25,000); and having Plan-It pay \$3,000 per month to her and \$4,000 per month to him in consulting fees. The arrangement with Plan-It was to be in place for at least two years, after which it could be renegotiated. In addition, Plan-It was to continue to pay for their vehicles and the monthly payments they were required to make to the Trustee for their consumer proposal.
- f) Option 2 was for Ms. Welliver to resign from Plan-It and receive \$25,000 or 1,500 ounces of silver. This buyout payment "would be exchanged for the \$25,000 or 1500 ounces of silver bars that would have been paid to you as your equity payment." I am not sure that I understand the intent of this option, but believe that Ms. Welliver was to receive the equity in the family home as well as the silver, which represented her interest in the business.
- g) Option 3 was for Ms. Welliver to resign from Plan-It and Mr. Hees would pay spousal support as determined by the courts, which was estimated to be in the range of \$3,000 to \$4,200 per month on a permanent basis. She would get the home and pay for his share of the equity with the silver bars.
- h) Ms. Welliver says that Mr. Hees never gave a response. Certainly no written response was provided. The parties spoke and she sent a second email on June 22, indicating that he had to let her know what he wants and how he sees the business relationship continuing in the future. In spite of these entreaties, Mr. Hees did not give a response and for the rest of 2010 Ms. Welliver did not receive any spousal support. She did no work for Plan-It and did not receive any payments from the business.
- i) At some point in 2010, Mr. Hees saw a lawyer for a short consultation. He does not remember the lawyer's name or when that happened. He did not retain a lawyer.

- j) Ms. Welliver says she was emotionally distraught and exhausted. She says she found him to be very intimidating. She gave no details as to why she found him intimidating, except that he controlled Plan-It and she felt that he controlled her financially because she could not keep the family home if he stopped providing money or insisted on selling it. She was also upset that Mr. Hees was pursuing another relationship.
 - k) No agreement was reached after the emails, but in early 2011, some six or seven months after the emails, Mr. Hees said he wanted Ms. Welliver to become involved in Plan-It again. He says that he told her he wanted to implement Option 1; however, she does not agree that he ever said that. As of early 2011, Plan-It started to pay Ms. Welliver generally in accord with the proposal in Option 1. This included \$3,000 per month plus amounts for the car insurance and lease. While they both agree this amount was paid, the financial statements show a much smaller amount. I understand this is because some of the money paid to the parties was expensed on those statements. Plan-It also reimbursed her \$3,500 for courses she took in 2010 to further her education and employability.
 - l) There seems to have been an understanding that Ms. Welliver would get the house and that she would pay 1,500 ounces in silver for his equity in the house. He received some or all of the silver in either 2010 or 2011.
 - m) Ms. Welliver says she told Mr. Hees on a number of occasions that she needed to have a separation agreement, although none was ever drafted or proposed. She says she raised the issue of the separation agreement in February 2011 and October 2012, at which time she was afraid Mr. Hees would stop paying her.
 - n) In late 2012 or early 2013, he told her that Plan-It could no longer afford to pay her. It stopped doing so in April 2013.
 - o) The house was then put up for sale in May 2013. Ms. Welliver received approximately \$86,000, which was all of the net proceeds from the sale of the house. Mr. Hees received the 1,500 ounces of silver over a period of time prior to the actual sale of the house.
 - p) The notice of family claim was issued on March 15, 2013, and served in September 2013, following which Mr. Hees retained counsel for the first time.
- [21] On the basis of this chronology, Ms. Welliver says that the parties were engaged in negotiations, attempting to arrive at a settlement, from June 2010 until the end of 2012. Further, she says these negotiations were pursuant to the legal advice she received in June 2010. Accordingly, she says the running of the limitation period should be suspended in accordance with s. 198(5).

- [22] Before leaving the factual background, I should note that Mr. Hees has been adamant from the time of the separation that he would not pay spousal support. This is the position he took with Ms. Welliver. However, he apparently also told her that he did not want her to be destitute. He appears to be of the view that the way in which they divided the property was beneficial for Ms. Welliver and was sufficient to satisfy any obligation he had.
- [23] It is clear that Mr. Hees never obtained legal advice other than by way of the brief initial consultation. He did not have any interaction with the lawyer hired by Ms. Welliver in 2010. Finally, I note that Mr. Hees said that he told Ms. Welliver that he accepted her Option 1 proposal. She denies that. Many of the significant terms of Option 1 were put in place, but certainly not all of the terms. On the basis of all of the evidence, I cannot conclude that the parties agreed to implement the terms of Option 1 as set out in the email.

Analysis

- [24] The provisions of s. 198(5) do not appear to have been considered by any court in this province. Before turning to that provision, I must comment on an argument which was not raised by Mr. Hees. That is whether the provisions of the Family Relations Act should apply to the spousal support claim advanced by Ms. Welliver. Under the Family Relations Act, s. 1, a spouse was defined to include a person who:

except under Parts 5 and 6, lived with another person in a marriage-like relationship for a period of at least 2 years if the application under this Act is made within one year after they ceased to live together

- [25] This raises a potential defence for Mr. Hees. When the action was commenced, the parties were not spouses as defined in that Act because the action for spousal support had not been commenced within one year of the time they ceased to live together. Indeed, it was commenced more than three years after they separated. When the action was commenced, the Family Relations Act had not been repealed. Accordingly, as of March 15, 2013, the parties were not spouses for the purpose of commencing a claim for spousal support. This is a simple defence to the claim for spousal support. However, in order to consider whether it applies, I would need to determine if Mr. Hees had a vested right to the limitation defence which could not be affected by the enactment of the Family Law Act. I received no argument on that issue.
- [26] Given the decision in *Matteucci v. Greenberg*, 2016 BCCA 116, and the conclusion I have arrived at regarding the Family Law Act limitation defence, I will not consider this possible issue under the Family Relations Act. In other words, I have concluded that Mr. Hees has a limitation defence under the Family Law Act and so I need not decide if he had a vested defence under the Family Relations Act.

- [27] Before leaving that issue, I should note that in Matteucci, at para. 46, the court found that the Family Law Act intended to attach new consequences for the future with respect to the state of affairs that existed in the past:
- [46] As I see it here, the FLA defining provisions are attaching new consequences for the future, as of the date of passage of the statutory provision, with respect to a state of affairs that existed in the past. Thus a spouse or former spouse has status to bring an application under the FLA provided the express limitation periods are met. Moreover, as the enactment of the FLA repealed the FRA, a contrary interpretation would have created an unexplained lacuna. Unmarried spouses who separated prior to March 18, 2012 could not avail themselves of the FLA while those who separated after March 18, 2012 could. In my view there is nothing in this remedial legislation that evinces such an intention.
- [28] Based on these comments, I will assume that Ms. Welliver can take advantage of the provisions of the Family Law Act and will consider whether she has a valid claim for spousal support in light of the provisions of s. 198.
- [29] In *Shutiak v. Sperring*, 2015 BCSC 2344, Madam Justice Brown considered a summary trial application by Mr. Sperring to dismiss claims for spousal support and property division. The parties were never married but had a long-term relationship which ended on April 1, 2011. They entered into a separation agreement on August 16, 2012, in which both parties waived spousal support. Her notice of family claim seeking property division and spousal support under the Family Law Act was filed on July 30, 2013. In relation to spousal support, the summary trial application was based on the argument that it was barred by s. 198(2)(b). The claimant there was relying on the discoverability provisions of subsection (3) to set aside the separation agreement. Those are not relevant here. The claimant also relied on s. 198(5) to extend the spousal support limitation. Mr. Sperring's application was dismissed on the basis that the case should proceed to a full trial.
- [30] In arriving at the decision, the court did not specifically comment on the interpretation of s. 198(5), but noted that the claimant might succeed in relying on that provision to extend the limitation period. At para. 27, Brown J. made the following comments:
- [27] [The claimant] says that she retained counsel on May 3, 2012. Although she discharged her counsel at the end of June 2012, the parties continued to attempt to resolve their dispute and Mr. Sperring retained his counsel who prepared the agreement which was ultimately signed on or about August 16, 2012. She retained counsel again, by her own account, in December 2012. If the dates during which she says she was engaged in dispute resolution with a dispute resolution professional are deducted, then she would have filed her claim within time as contemplated by s. 198(5). Again, I am not able to determine this issue on the evidence before me.
- [31] In that case, the time which needed to be suspended in order to bring the claim within the limitation period was not long; only four months. The parties worked with lawyers, dispute resolution professionals, in order to arrive at a settlement agreement for at least three-and-a-

half months. The court acknowledges that the period after December 2012 might also qualify, although no decision was made regarding the suspension of time. In other words, it was evident to the court that a careful consideration of the evidence would be required to determine if the limitation period applied.

- [32] The court, in Shutlak, seems to accept that if one party is working with a dispute resolution professional, that may be sufficient to suspend the running of time pursuant to s. 198(5). As I will explain, I am of the view that when only one party is working with a lawyer, all of the circumstances would need to be examined in order to determine if the test as set out in the subsection is satisfied. However, in the circumstances of the present case, even if I assume that one party working with a lawyer could extend the time, the time for commencing the action passed prior to March 15, 2013 and the claim is statute-barred.
- [33] I arrive at this conclusion based on my interpretation of s. 198(5). The modern approach to statutory interpretation is described by Elmer A. Driedger in *Construction of Statutes*, 2nd ed. (Toronto: Butterworths, 1983) at 87:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.

- [34] As set out in Matteucci, the Family Relations Act is remedial legislation which intended in part to correct the mischief of treating common law couples differently than married couples. The provision in question must be interpreted accordingly. Of course, the limitation provision applying to spousal support for unmarried spouses in the Family Law Act does not match the provision in the Divorce Act. However, it does extend what was a very short limitation period under the Family Relations Act. The time period for commencing a claim was extended by one year and s. 198(5) was added, which allows for a further extension where the parties are attempting to resolve their dispute with a family dispute resolution professional. This provision furthers the object found throughout the Family Law Act of favouring dispute resolution over litigation but tries to put some structure to that by requiring the involvement of a family dispute resolution professional.
- [35] The suspension of the time limit under s. 198(5) is for any period "in which persons are engaged in family dispute resolution with a family dispute resolution professional." The latter part of the phrase is not difficult to interpret or apply. The dispute resolution which is taking place must be with a professional. In the circumstances of this case, the only family dispute resolution professional possible would be a lawyer. Mr. Hees never retained a lawyer and the one he consulted briefly never engaged in family dispute resolution activities. Ms. Welliver did retain a lawyer and received important advice regarding her rights. She made an offer based on that advice and let Mr. Hees know that this was done on the basis of her lawyer's recommendations.

- [36] The more difficult portion of the subsection to interpret is the period of time during which "persons are engaged in family dispute resolution". I make two observations about that language. First, it requires persons, plural, to be engaged in dispute resolution. It is not sufficient if one of the spouses is trying to resolve the dispute while the other is not; the engagement of both is required.
- [37] The second observation is that the engagement of the parties in dispute resolution must be with a family dispute resolution professional. There is no need for both parties to retain counsel or for both parties to hire a mediator or other professional. However, both must have some kind of engagement with a family dispute resolution professional in the dispute resolution process.
- [38] It is obvious that there can be difficult questions of fact arising from this provision. It may in some cases be difficult to determine if both parties are engaged in dispute resolution and whether they are engaged with a family dispute resolution professional. However, on the evidence in this case, I have no hesitation in concluding that any suspension of time because the parties were engaged in family dispute resolution with a family dispute resolution professional was brief.
- [39] I accept Ms. Welliver's separation date - March 7, 2010 - as that is the latest possible separation date. About three months passed before either party retained counsel or entered into any dispute resolution. In June 2010, Ms. Welliver retained a lawyer and attempted to start discussions. Mr. Hees saw a lawyer around that time but the discussions did not proceed. Ms. Welliver says her offers were rejected. He says he agreed to proceed with Option 1, but I reject that evidence. He did not agree to anything in 2010, which was evidenced by his actions involving Plan-It. He took Ms. Welliver out of the operations completely. However, in early 2011, he changed his mind and decided to get Ms. Welliver re-involved in Plan-It.
- [40] In 2011, after Mr. Hees' relationship with the woman in Oregon fell apart, he made the overture to get Ms. Welliver re-involved with Plan-It. She agreed. The parties then had some discussion about division of their assets and the future of Plan-It. I accept that they were engaged in attempting to resolve their disputes. It was in this time period when they appear to have resolved the division of assets. However, at that time there was no engagement or involvement with a family dispute resolution professional.
- [41] Ms. Welliver indicated from time to time that she wanted a separation agreement and she undoubtedly had in mind the advice she received from the lawyer she hired in 2010. However, it would be a tremendous stretch to say that the parties were engaged in family dispute resolution with a family dispute resolution professional. Rather, each had received some legal advice and they were moving forward with their affairs. They resolved some issues but did so without any documentation or precise terms. Throughout this time Mr. Hees continued to insist that he would not pay spousal support.

- [42] The next involvement of lawyers came only after Mr. Hees indicated to Ms. Welliver that Plan-It could no longer pay the monthly amount to her. This occurred in early 2013 when the notice of family claim was issued.
- [43] When I examine all of these facts, I conclude that the parties were engaged from time to time in attempting to resolve their family dispute. However, between March 2010 and March 2013, Mr. Hees was never actively engaged with a family dispute resolution professional. Assuming that time is suspended if one party is working with counsel while the spouses are actively trying to resolve their dispute, then I would conclude in these circumstances that the parties were engaged in doing so for a relatively short period of time around June of 2010 when Ms. Welliver retained counsel. That time could be no more than two or three months. After that, the parties had no engagement with a family dispute resolution professional for the purpose of resolving their dispute until the notice of family claim was issued.
- [44] It is important to limit the suspension of time to periods when parties are engaged in dispute resolution with a family dispute resolution professional. If all that was required to extend the limitation was the retention of counsel by one party and an attempt to start settlement discussions, there would, in many cases, be an ongoing suspension of the running of time. I do not read s. 198(5) as establishing that kind of a regime. It is intended to suspend the time when the parties are truly engaged with professional assistance in trying to actively resolve their family dispute.
- [45] Based on these conclusions, I must find that the action was commenced more than two years after the parties separated. While this conclusion seems harsh, it must be remembered that the right for an unmarried party to seek spousal support is a statutory right limited by the provisions in the Family Law Act. Even though Mr. Hees, on the facts of this case, has a clear moral obligation to provide support after 22 years of an inter-dependent relationship, the action was not brought within the time limit in the statute.

Issue 2: Does Ms. Welliver have an entitlement to spousal support and, if so, in what amount?

- [46] Given the result I have reached on the first issue, I need not consider this question. However, I will make findings on this issue to assist the parties in the event that this matter is appealed and my ruling is overturned. I will provide only brief reasons. I note, however, that this issue was thoroughly argued and much of the evidence was directed to it.
- [47] There is no doubt that Ms. Welliver would, but for the limitation period, be entitled to spousal support. Her entitlement is primarily non-compensatory but has a compensatory element to it. She performed all of the household duties for the couple for 22 years. This allowed Mr. Hees to pursue his businesses. While Ms. Welliver was involved in those businesses, she had a secondary, administrative role. She suffered the impact of the breakdown of the relationship because she was unable during the course of the relationship to pursue a career in the way that Mr. Hees was able to do.

- [48] The non-compensatory basis arises because of the nature and the length of the relationship. For 22 years, the parties had a very close economic partnership. This involved both their business and their personal lives. They received the benefits of that partnership equally and suffered the shortcomings of their ventures equally. This included their two bankruptcy filings. When they separated, Mr. Hees was the driver of their economic welfare. Ms. Welliver supported his activities which earned their income.
- [49] I would impute an income to Mr. Hees in the amount of \$35,000 per year. While he has a Line 150 income of only \$12,500, he has been able to live a lifestyle which evidences a much higher level of income. He also has education and experience which should allow him to earn more than what is reflected on his tax returns. I conclude that a large portion of his personal expenses are paid by Plan-It. The creative accounting has enabled him to show a very modest income. There is no other way to understand how he could operate a vehicle, have a telephone, carry on the business, feed and clothe himself, take holidays, and pay off \$600 per month for the consumer proposal on the basis of an income of \$12,500.
- [50] While his income must be higher than what he shows, it cannot be anywhere near the amount suggested by Ms. Welliver. The parties struggled financially for years. They left a 22-year relationship with little in the way of assets. They never earned substantial amounts of income and failed to file tax returns or pay tax for 13 years. The amount of credit card debt carried at the time of the consumer proposal was overwhelming.
- [51] I would also impute an income of \$16,500 per year to Ms. Welliver. She is providing valuable services to her son and is being "paid" or compensated for those services with room and board. If she was not doing that, she has marketable skills in a variety of fields. However, given her age and lack of recent market employment, she would have difficulty getting a job which would pay more than minimum wage. She would also have difficulty obtaining a full-time job in her current location.
- [52] These imputed incomes would result in Mr. Hees having to pay a mid-range of support of \$567 per month on an indefinite basis.

Issue 3: Can Ms. Welliver succeed in her property claims?

Plan-It GIC claim

- [53] Ms. Welliver asks for her share of approximately \$30,000 which was held in a GIC by Plan-It prior to September 2009. That month, the GIC was redeemed and the money was transferred to Plan-It's bank account. Ms. Welliver says that some of this money was used for Mr. Hees' trips to Oregon, which did not have a business purpose. Mr. Hees says the funds were needed for the operation of the business and that the funds were not used or earmarked for any particular purpose by Plan-It. He also says that the trips to Oregon had a business purpose and that all expenses for the company were appropriate. He also notes that this was just before the parties made their consumer proposals. The money was needed by Plan-It at that time, as the parties were in difficult financial circumstances.

- [54] This claim is misconceived and there is no factual basis to support it. If the funds or some portion of them were spent wrongfully or fraudulently on personal rather than corporate matters, the claim would belong to the company, not Ms. Welliver. However, even if the claim could be considered in this action (and I note there is nothing in the pleadings which raises it), the evidence in support of the allegation is inadequate. I am unable to determine if any funds were improperly applied to Mr. Hees' personal expenses. The claim is dismissed.

Other Property Claims

- [55] Ms. Welliver alleges that Mr. Hees kept a large sum of cash in a safe which he removed. However, no evidence was led on this issue. That is also dismissed.
- [56] Ms. Welliver says that Mr. Hees kept his rock collection and that she should receive a compensation payment for 50% of the value of the collection. There was no evidence as to the actual contents of that collection or the purchase price of any of the rocks. I did not permit Ms. Welliver to lead general evidence about values of rock collections because, without any specifics, that evidence could not be helpful. Mr. Hees objected to this claim, as he was not aware of it until the trial. I agree that it is too late to raise the question.
- [57] However, the more significant problem with the claim is that this action is brought under the Family Relations Act. The rocks belong to Mr. Hees. He had been collecting them since his youth, long before the relationship with Ms. Welliver. They were never used for a family purpose under the Family Relations Act, and are thus not family property. The claim is dismissed.
- [58] The final claim advanced by Ms. Welliver is for 50% of the property taxes and roof repair expenses incurred for the family home between April 2010, after Mr. Hees moved out, and the date the house was sold in 2013. The parties agreed that Ms. Welliver was entitled to the net proceeds of the sale of the home. Mr. Hees was paid for his share of the equity by way of the silver bars. She says he should share equally in the expenses, but he says she should be responsible for those costs because she got the house.
- [59] I conclude that the agreement between the parties regarding the house included the understanding that Mr. Hees would pay his share of the property taxes and of any major repairs required to be performed to maintain the property in a condition that it was saleable. Accordingly, he is required to reimburse Ms. Welliver for 50% of those costs. I arrive at this conclusion for two reasons.
- [60] First, Mr. Hees says that he accepted Option 1 set out in the email. While Ms. Welliver disagrees, she says he was to pay the property taxes. Option 1 does contain the provision that Ms. Welliver would pay "one half of the property taxes" until Mr. Hees is removed from title. Accordingly, he would have to pay the other half.

- [61] Second, the agreement to divide the property saw Ms. Welliver paying Mr. Hees for his share of the equity. The intended result was that each party would receive one-half of the equity. That must refer to net equity, which should take into account the equity at the time the house was sold. The roof expense is not specifically set out in Option 1, but the concept that Ms. Welliver retains the house and pays Mr. Hees for his share of the equity must mean that the parties were equally responsible for maintenance of the house until the sale, just as they were equally responsible for property taxes, otherwise she would not receive one-half of the equity. Mr. Hees obtained the benefit of that major repair and is responsible to pay for half of it.
- [62] If the parties cannot agree on the cost of 50% of the roof repairs and property taxes, this matter is to be referred to the Registrar to be determined pursuant to Supreme Court Family Rule 18-1(2) and the result of the Registrar's assessment shall be certified and will be binding on the parties.

Plan-It

- [63] The final issue before the court is the resolution of the ownership and division of assets and liabilities associated with Plan-It. Ms. Welliver continues to own half of the shares; however, she has been effectively prevented from having any involvement in the company for three years. When the claim was started, Mr. Hees purported to have her removed as a director, which means that she has had no access to information as well as having no involvement in the business. She has no desire to retain her shares and he agrees. He does not want her to be involved in the company.
- [64] Accordingly, I order that Ms. Welliver's shares either be transferred to Mr. Hees or that her shares be cancelled. This should be done in the most tax effective way for the parties.
- [65] Mr. Hees wrongfully removed Ms. Welliver from participation in the company for more than three years, took all of the benefit of the revenues earned, either by way of personal contract payments to himself or payment of personal expenses. No evidence was led as to the value of the company, but having looked at the financial statements it is clear that it has no assets of value and no value as a business on an ongoing basis. Accordingly, rather than requiring Mr. Hees to pay an amount for Ms. Welliver's shares, I order that he must assume all of the company's liabilities. In other words, Mr. Hees must hold Ms. Welliver harmless with regard to any claims arising from company liabilities whenever incurred. He must also take steps to have her removed as a guarantor of any bank obligations.
- [66] That concludes my reasons. Given the result I have arrived at, each party will bear their own costs.

"Butler J."

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