IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Pelletier v. Pelletier,*
2024 BCSC 409

Date: 20240312
Docket: S137058
Registry: Kelowna

Between:

Jeanette Pelletier

Petitioner

And

Lorraine Jeanne Pelletier

Respondent

Before: The Honourable Mr. Justice Ball

Corrected Judgment: The front page of the judgment was corrected on March 14, 2024

Reasons for Judgment

Counsel for the Petitioner: L.D. Nykolaychuk

The Respondent, appeared in person: L. Pelletier

Place and Date of Hearing: New Westminster, B.C.
June 23, 2023

Place and Date of Judgment: Kelowna, B.C.
March 12, 2024

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Introduction

[1] This matter was heard in Chambers by electronic means pursuant to the *Partition of Property Act*, R.S.B.C. 1996, c. 347 ("PPA"). Sections 2(1), 4(1) and 6, entitle a property owner with an at least fifty per cent ownership interest to request the court to direct a sale of the property and force all interested parties to sell the property. These sections provide as follows:

> **2** (1) All joint tenants, tenants in common, coparceners, mortgagees or other creditors who have liens on, and all parties interested in any land may be compelled to partition or sell the land, or a part of it as provided in this Act.
>
> …
>
> **4** (1) Any person who, if this Act had not been passed, might have maintained a proceeding for partition may maintain such a proceeding against any one or more of the interested parties without serving the other or others, and a defendant in the proceeding may not object for want of parties.
>
> …
>
> **6** In a proceeding for partition where, if this Act had not been passed, an order for partition might have been made, and if the party or parties interested, individually or collectively, to the extent of 1/2 or upwards in the property involved request the court to direct a sale of the property and a distribution of the proceeds instead of a division of the property, the court must, unless it sees good reason to the contrary, order a sale of the property and may give directions.

Background Facts

[2] The petitioner is the respondent's mother. The parties are tenants in common of a property located at 9509 Steuart Street, Summerland, BC (the "Property"), which has a legal description of:

> PID: 002-564-912
>
> Lot 1 District Lot 472 Osoyoos Division Yale District Plan 6532 Except Plan 40924 and HD77

[3] The Property is a 0.749 acre lot in Summerland, located in the Agricultural Land Reserve, and was assessed by BC Assessment in 2023 at $1,647,000.

[4] When first purchased by the parties and their respective spouses in 1995, the building on the Property was a two-story house with a partially finished basement (the "Home"). While owned by the Pelletier family, the Home on the Property has

been divided into two halves approximately, with the petitioner and her spouse occupying one half and the respondent and her spouse and children occupying the other half.

[5] Some time after the Property was purchased, the petitioner and her then husband moved from Whitehorse to Summerland. They liquidated their savings to use the capital to create an extensive expansion of their side of the Home and also to renovate the respondent's portion of the house on the main and second floors. Upon completion of these renovations to the entire Home, the petitioner's side of the Home was over 3,000 square feet and included an 880 square foot unfinished basement (used for storage), a 1,300 square foot main floor with a kitchen, living room, two bathrooms, a utility room, a master bedroom, and a large office/craft room, as well as a 900 square foot top floor with a large games room, half bathroom and a library, also referred to as the loft. In addition to the expansion of the Home, the petitioner and her husband paid to install new laminated flooring with in-floor heating cables, as well as a new hot water heater, furniture for living rooms on both sides of the Home, new appliances for both kitchens, and a new staircase on the respondent's side of the Home. In addition, new siding and windows were installed on the exterior of the Home and a shared sunroom was created. A newly paved driveway was also installed at the front of the Home with a shared front patio/entrance to the Home. The petitioner is not directly making a claim for the value of these improvements.

[6] Up until July 2015, the petitioner and her husband contributed a monthly payment of $700 to a line of credit account with an additional amount for expenses such as utilities. After July 2015, when the petitioner's husband died, it was agreed that the petitioner would continue to contribute $550 per month, which she continued to do. In September 2019, the petitioner says she was actively ousted from the premises and the entirety of the Home was occupied by the respondent and her children. The petitioner also noted in her affidavit at para. 46, that only minimum interest payments were made in more recent years on the line of credit so that the

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principal amount has not been reduced and remains with approximately $440,000 owing.

[7] Also located on the Property was a detached garage with a carriage house. The garage was converted into a suite (“the Garage Suite”) on its main floor, with a studio apartment above the garage referred to as the “Carriage House Up” (the “Carriage House”). There was also a three-bedroom upstairs suite in the main house of the Loft or “the Upstairs Suite”. The respondent’s two daughters have been living in the main floor of the respondent’s side of the Home and there is access to the upper floor by exterior stairs which access the respondent’s upper space.

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[8] The petitioner and respondent were registered as joint tenants of the Property until October 2019, when the petitioner severed the joint tenancy. Since the severance of the joint tenancy, the parties have held the Property as tenants in common.

[9] The severance of the title occurred after the petitioner determined that the respondent had occupied the entire Home while the petitioner was away from the Home receiving medical treatment for an extended period. While the petitioner was away, the respondent had also changed the keys for the locks on the doors of the Home, leaving the petitioner without access to the Property. These changes occurred without the petitioner first being advised.

Rental Arrangements

[10] For some period, the Home functioned as an open duplex with two kitchen areas existing adjacent to one another without a separating wall. In late 2017, the respondent moved furniture and installed walls to separate the kitchen spaces. The respondent also collected rent from the four separate suites referred to above: the Garage Suite ($1,300 per month), the Carriage House ($800 per month), and the Upstairs Suite ($1,660 per month). Over time, the petitioner also asserts that the respondent’s daughters paid rent to the respondent of approximately $750 for the use of her half of the Home, and that the respondent occupied the petitioner’s half of the main floor of the Home without paying rent to the petitioner. A nephew of the

respondent also occupied a trailer located on a trailer pad on the Property (the "Trailer Pad") for which he paid the respondent $350 per month. The total rental received by the respondent, without including the Trailer Pad, in 2023 was $4,510 per month. The petitioner has not received any accounting from the respondent for the rentals referred to above.

[11] In or around October 2017, the petitioner was hospitalized as a result of a "mini-stroke". Following recovery and on medical advice, the petitioner planned to return to her portion of the Home, but was advised by her son that her personal bank savings account had been emptied by the respondent, without the petitioner's consent.

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Evidence at the Hearing

Respondent's Evidence

[12] The respondent filed a single affidavit sworn May 29, 2023. The affidavit was prepared without numbered paras. with some paras. marked only by four digits indicating a year.

[13] Not mentioned in the respondent's affidavit, in or around the year 2001, after the respondent and her husband separated, she left paid employment and received a disability pension thereafter. There is no evidence that she returned to paid employment thereafter. The fact that the respondent did not contribute any income or other monies from employment or her disability pension is supported by Exhibit "B" to the affidavit of the respondent, where under the heading "Income", no contribution of from the respondent is noted between the years 2015 through to and including 2023. In the same period, Exhibit "B" shows a contribution of the petitioner of $29,150. As set out in para. 35 below, $29,150 is an error as the correct amount of the contribution by the petitioner was $35,053.40.

[14] In the para. entitled "2006" of the respondent's affidavit, the respondent stated that she started billeting hockey players beginning with one player and increasing to as many as ten players from 2006 up to and including 2015. The respondent asserted that the income from the billeting activities was deposited into a joint

household account. The petitioner, at para. 3 of her June 14, 2023 affidavit states that the respondent does not mention that "these hockey boys were also housed on Jack and my side of the house (in two of our bedrooms and the upstairs games room with the pool table)." No documents, ledgers nor bank records were produced by the respondent to demonstrate this assertion although these documents and other records would be uniquely in the records in the possession of or accessible to the respondent. This issue will be referred to later in these reasons as the "Billeting Issue".

[15] In a para. marked "2017 – 2018" on the second page of the respondent's affidavit, the respondent made statements that, after the petitioner went into hospital, the smell of cat urine in the Home was "overwhelming". The petitioner directly disputed these statements as false, and provided a factual explanation for the temporary presence of the smell of cat urine. There is no basis for this Court on a Chambers application to resolve this factual dispute between the parties.

[16] In the following para. of the respondent's affidavit, the respondent made statements about her inability to administer insulin to the petitioner by injection. There followed the report by the respondent about a conversation with the petitioner's son, Lindsey. That conversation is clearly hearsay; a statement made out of court for the purpose of proving what was said is true. There is no known exception to the hearsay rule which would support the admission of the contents of this para. on this application.

[17] The petitioner, on the other hand, provided evidence that she was not permitted to be discharged from hospital until she had learned to administer insulin shots to herself, and that she had learned to inject insulin to herself prior to release from hospital. In this situation, I accept the petitioner's evidence and reject the respondent's evidence, because the ability of the respondent to inject insulin had no significance after the petitioner was able to inject herself prior to her discharge from hospital.

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[18] The respondent also acknowledged that, without the permission or consent of the petitioner, and while the petitioner was in hospital awaiting surgery, the respondent transferred the entire contents of the petitioner's savings account ($22,000) into a joint account shared by the parties. From that account, the respondent indicated she spent $16,500 to repair the septic system on the Property and later returned $7,000 to the petitioner. The respondent acknowledged that she did not discuss the septic repair with the petitioner, who had rejected any responsibility for the cost of that repair.

[19] Like elsewhere in the respondent's affidavit, the para. which refers to the removal of funds from the petitioner's savings account includes hearsay statements. In this para., the statements are attributed to the petitioner's doctors about the likelihood that the petitioner would not survive surgery. The petitioner asserted she had received only a normal pre-surgery warning that the results of complex surgery could not be guaranteed to be positive, but no opinion that she was unlikely to survive surgery. But, of greater significance, while the respondent refers to a hurried need to respond to the repairs to the septic system, the petitioner asserts that the repairs to the septic system had been conducted more than a year prior to the petitioner's attendance in hospital for surgery. Further, as the septic system repair serviced only the respondent's side of the Home, there appears to be no basis upon which the petitioner would be required to assist with that repair. The sworn evidence of the petitioner was that her side of the Home was serviced by its own septic system.

[20] As a result, based on the foregoing facts, the respondent had no proper nor lawful basis to remove funds without the petitioner's consent from the petitioner's savings account for septic system repairs required on the respondent's half of the Property. The respondent must forthwith repay the petitioner $15,000, being the difference between $22,000 and $7,000.

[21] In the para. 2 on the third page of the respondent's affidavit, reference is made to Exhibit "A" which purports to be a letter dated May 8, 2023 from a person

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identified as "Lynda Rittenhouse". This letter is not a document sworn in the form of an affidavit as set out in Rule 8-1(9)(b) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*]. This document is hearsay and, again, there is no known exception which would permit Exhibit "A" to be admitted into evidence in this proceeding. I find Exhibit "A" is not admissible and its contents cannot be considered by this Court. Were this document allowed into evidence, its contents were in direct conflict with para. 48 of the first affidavit of the petitioner, which stated the meeting referred therein took place in 2017, some three years before the locks were changed by the respondent.

[22] Both parties mentioned the petitioner moved into the Dr. Andrews Pavilion, an assisted living facility, after her medical operation. The evidence before this Court was that the petitioner was operated upon on or about May 26, 2019, and remained in hospital for recovery and treatment until August 15, 2019, when she was discharged to the Dr. Andrews Pavilion. The respondent stated that the petitioner "decided" to move there. The petitioner answered in her second affidavit that the entirety of the contents of the para. involving the move to the assisted living facility was untrue. The petitioner stated she was unable to return to the Home as it was fully occupied by the respondent, members of her family and other tenants, and the cause of the move into an assisted living facility was the complete occupation of her half of the Home by the respondent.

[23] The respondent asserted that she changed the keys and coded locks in the Home because she had no knowledge of where the keys to the Home were located. According to the affidavits of the petitioner and Lindsey Pelletier, both possessed sets of keys and no query about keys to the Home was made by the respondent to either of them. Mr. Pelletier gave evidence he was surprised to find that his keys did not work when, at the time of his mother's surgery, he attempted to enter the Home, for the purpose of gathering her belongings. He entered through an open window and had a very unhappy conversation with the respondent, who told Mr. Pelletier that his mother did not live in Home anymore. This was news to the petitioner.

Evidence of Earl Joostema

[24] The affidavit of Earl Joostema was sworn April 19, 2023, and filed April 19, 2023. Mr. Joostema is an experienced real property appraiser with over 20 years experience in that field. He is a member in good standing of the Appraisal Institute of Canada; qualified with the designation of "Canadian Residential Appraiser" and holds a certificate in Real Property Assessment from the University of British Colombia. He has completed a number of subsequent courses in the field of real property appraisals. Over the past 20 years he has completed more than 12,000 real property appraisals including single-family residential, vacant land, small and large holdings, including hobby farms, rural recreational properties, seasonal cabins and local and rural lakeshore properties.

[25] In December 2022, Mr. Joostema was retained by the petitioner to complete an appraisal of the Property. He had previously been retained by the petitioner and her son, Lindsay Pelletier, in July 2020 to complete an appraisal of the Property. At that time, Mr. Joostema attended the Property to complete the first appraisal. The first appraisal as at July 22, 2020, appraised the Property at $1,295,000.

[26] Mr. Joostema attended the Property for a second time on December 23, 2022. In the second appraisal (the "Joostema Appraisal"), based on an inspection of the Property on December 23, 2022, Mr. Joostema opined that the market value of the Property, "maintained in average condition for its age", was $1,503,000.

Evidence of Matthew Laydon

[27] The petitioner advanced expert evidence of Matthew Laydon. He stated he was aware of his duty under Rule 11-2 of the *Rules* and he was prepared to give evidence in Court in accordance with that Rule. In his affidavit filed April 21, 2023, Mr. Laydon asserted that he is a licensed property manager with South Okanagan Property Management in Penticton, the nearest large city to Summerland, where the Property is located. He manages 35 properties in and around the Penticton area and his company has a portfolio of approximately 114 properties under management in the Penticton area. His day-to-day responsibilities as a property manager include:

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(a) evaluating properties, preparing and providing market evaluations; (b) marketing properties for clients; (c) screening potential clients; (d) completing tenancy agreements; (e) procuring conditional move-in inspections; (f) collecting rent; (g) conducting inspections; (h) refilling and managing rental increases where applicable; (i) handling tenant disputes; and (j) providing paperless reporting to his clients on a monthly basis.

[28] At the request of the petitioner, Mr. Laydon prepared a market rental assessment for the portion of the Home assigned to the petitioner (the "Petitioner's Suite"). He relied upon the following assumptions: (a) the petitioner was a 50% owner of the Property; (b) that portion of the Property included (i) an unfinished 880 square-foot basement; and (b) a main living area of approximately 1300 square feet, which included a kitchen, living room, bedroom, craft room, two bathrooms (main floor three-piece bath off the bedroom, with another bathroom off the utility room with toilet, sink and shower). Mr. Laydon also understood that the petitioner had access to a shared sunroom, but the sunroom area did not inform his opinion. He was also instructed that the petitioner had not lived in the Home since August 2019.

[29] Mr. Laydon considered a number of documents to form his opinion including the database at South Okanagan Property Appraisals which included all listings currently under management, a review of publicly listed rental advertisements on the internet, the Joostema Appraisal, an annotated floor plan of the main floor of the suite occupied by the petitioner as well as photographs attached to the Joostema Appraisal and attached as Exhibit "C" to the affidavit of Lindsay Pelletier filed herein. Mr. Laydon did not conduct a site visit of the Home as he stated that the petitioner did not have access to the Home.

[30] Based on his experience and review of listed databases, the Joostema Appraisal, and the annotated floor plan and other documents including historical property listings dating back to August 2019, Mr. Laydon opined that the Petitioner's Suite would currently rent for $2,000 to $2,200 per month, plus utilities, and that the Petitioner's Suite would have rented for $2,000 to $2,200 per month back to August

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2019, the month that the respondent moved into the Petitioner's Suite on a permanent basis.

[31] The respondent did not have any legal basis to occupy the whole of the Home, and, in particular, the respondent did not obtain the consent of the petitioner to permanently occupy the petitioner's half of the Home. She must account for this use as occupation rent. The only evidence of the monetary value of the rental of the petitioner's half of the Home is the evidence of Mr. Laydon at $2,200 per month. The calculation for this occupation rent shall be conducted by the registrar at the hearing authorized below.

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<u>Sale of the Property</u>

[32] At the outset of the hearing, the respondent indicated that she consented to the sale of the Property but there was a clear disagreement about the issues of occupation rent, accounting for rents received by the respondent for the use of the petitioner's share of the Property, and the sale price of the Property. The respondent asserted that she had applied all rents received from third party tenants to the mortgage or line of credit against the Property. From the contents of Exhibit "B" to the respondent's affidavit, a financial statement prepared by the respondent, the respondent paid a variety of expenses including irrigation, pest control, various utilities, internet as well as significant repairs and maintenance, all incidents of occupation, well beyond mortgage and home insurance. The petitioner disputes the amount and appropriateness of the expenses paid by the respondent. The respondent has, however, produced no written accounting or documents to prove this assertion. The respondent also stated that because she had moved members of her family into her side of the Home, she then occupied the petitioner's side of the Home and she felt that paying occupation rent for that use was "unfair". The respondent chose to move into the entire space available in the Home without the consent of the petitioner for long-term occupancy of the respondent. The petitioner was required to spend further monies to obtain accommodation outside of the Home, while at the same time she received no income from the use of her half of the Home by the respondent and the respondent's family. In these circumstances, the

petitioner was entitled to receive occupation rent from the respondent. This claim will be referred to later as the “Occupation Rent” issue.

[33] The respondent submits that all rents received by her from tenants in any of the rented portions of the Home, the Garage, the Carriage House, the Upstairs Suite and the Trailer Pad were deposited into a joint bank account maintained by the respondent. There was no evidence that occupation rent for the petitioner’s space in the Home was ever calculated or paid, and certainly no occupation rent was deposited into the joint bank account managed by the respondent.

[34] The respondent submits that since her mother left the Home and was no longer contributing to the upkeep costs or the mortgage on the Property, the respondent was entitled to move into the petitioner’s space in the Home and use the rental income to pay the expenses incurred in maintaining the Home and the rented portions listed above. The problem is that those deposits and any expenses related to the rental spaces have not been proven on any documents placed in evidence before this Court. These matters of accounting shall be canvassed by the registrar at a hearing fixed below.

[35] It is noteworthy that at page 2 of Exhibit “B” to the respondent’s affidavit, in the listing of income, there are failures to include income for 2015 by $5,450.88, in 2016 by $0.77, in 2017 by $1,100.52, in 2018 by $0.78, and in 2019 by minus ($1,649.55) reflective of a total error of $4,903.40.

[36] There was a consent order for the sale of the Property agreed to by the parties but they did not agree on the listing price. The original appraisal of the Property was $1,500,000, but other realtors have estimated, in hearsay statements, asking prices from $1,100,000 up to $1,300,000. Recently, in an “as is” condition, another realtor suggested orally an asking price of $1,000,000 but there was no admissible evidence is support of these “suggestions”. The line of credit which is secured against the Property is approximately $440,000 and outstanding property taxes deferred by the parties total, as of January 4, 2023, $52,020.27 without allocating any amount for the 2023 property taxes.

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[37] The two daughters of the respondent came to reside in the respondent's half of the Home, and the petitioner understood that they were paying the respondent $750 per month in rent. As noted below, the respondent moved into the petitioner's half of the Home without the agreement of the petitioner, who was then hospitalized. This rental income will be accounted for by the respondent in the proceedings before the registrar.

[38] It is difficult to consider the offers made between the parties to purchase or buy the property interests of each other as the offers are impliedly without prejudice in relation to a settlement offer of purchase or sale between contesting parties.

Case Authorities

[39] In the case of *Wang v. Jiang,* 2021 BCCA 132, the trial judge ordered payment of occupational rent because the plaintiff and other family members were living in the house for several months. In the Court of Appeal, the award of occupational rent was set aside and the Court of Appeal ordered accounting to reflect rental income foregone when the defendants occupied the property and to reflect mortgage payments they may have made which were not reflected in the Court's calculation of "occupational rent".

[40] At para. 73 of *Wang*, the Court of Appeal noted that "[t]he nature and conditions necessary for awarding occupational rent appear to be evolving in the law". The Court of Appeal quoted the following passage in *Re Crate Marine Sales Ltd.*, 2016 ONCA 433 at para. 25, which provided that where a person occupies the property of another, that occupation gives rise to a rebuttable presumption, based on an implied contract, that the occupier will pay rent to the owner for the use of the property:

> The threshold test for occupation rent is "occupation". It is not deprivation of use or possession. However, deprivation of the right of use, or possession, to the exclusion of the landlord will no doubt – in most cases at least – be tantamount to occupation for these purposes..
>
> [Emphasis in original.]

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[41] In *Wang*, the question of occupational rent arose when it became apparent that the defendants had ceased renting out the property to move into it himself. As noted at para. 76, "[t]he equities might have favoured the award of an amount in restitution to account for Jiang's occupation — but only after accounting for mortgage payments or other contributions made during the same period."

[42] At para. 81 in *Wang*, in order "to overcome the uncertainties arising from the Supreme Court's orders", the Court ordered "an accounting before the registrar … in order to determine the amount of which either of Mr. Wang or Mr. Jiang is entitled once the Jiang's unauthorized use and occupation of [the property in issue] and the mortgage payments have been accounted for". The Court of Appeal found that the registrar should determine the following:

> (1) to the extent it was not deposited in the joint venture's bank account, the amount of rental income collected from tenants from August 2014 on; (2) the duration of the Jiangs' unauthorized occupation of [the property in issue]; (3) the value (calculated at $4,000 per month) of rent foregone over the period of the Jiangs' unauthorized occupation; and (4) the Jiangs' contributions to mortgage payments that are not already reflected in Appendix C. As against the sum of (1) plus (3), the amount of mortgage payments made by the Jiangs, (4), should be offset, with the result that a final sum owing either by Mr. Jiang or by Mr. Wang to the other would be recommended by the registrar to a judge of the Supreme Court.

[43] The Court of Appeal finally ordered an accounting take place before the registrar of the Supreme Court of British Colombia without addressing ouster of the petitioner. I am satisfied that ouster has been made out on the facts of this case on a balance of probabilities. The Court of Appeal reasons carried on to differentiate accounting between rentals received by the respondent and payments made by both of the parties for the mortgage.

[44] These distinctions shall be applied in the case at bar as the respondent was saved from paying for her own expenses. Also, payments for household expenses by the respondent such as heat and light, garbage collection, wear and tear repairs or maintenance and the cost of utilities or television cables would be exclusively charged against the respondent during her exclusive occupancy.

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[45] In *Jenor Steel Incorporated v. 466372 B.C. Ltd.*, 2022 BCSC 1135, Justice Kirchner heard a case which dealt in part with an application for the sale of property under s. 6 of the *Partition of Property Act.* The parties, Jenor Steel Incorporated ("Jenor") and 466372 B.C. Ltd. ("466") had purchased a property together through a jointly-owned company, SDSI Inc. ("SDSI"), with mortgage financing from the Business Development Corporation ("BDC"). After the business of the company failed, the parties attempted to sell the property. Various offers from unrelated third parties were met with counteroffers made jointly by the parties, but ultimately the respondent refused to agree to a counteroffer. The petitioner then advised that it would not contribute further to the mortgage on the property. When the mortgage was not paid, SDSI was assigned into bankruptcy. The primary lender of SDSI, the Royal Bank of Canada ("RBC"), obtained judgment against each of the parties and their principals, Mr. Roussy and Mr. Savage. Eventually, RBC partially realized on the judgements and the amount owing was approximately $420,148.24. To stave off further execution, Mr. Roussy arranged to make mortgage payments on the BDC loan and also paid all utility and property tax payments for the Chilliwack property.

[46] BDC eventually called its loan and Mr. Roussy caused his holding company to take an assignment of BDC's security, which included a payout of the mortgage on the property, a loan used to purchase a crane for the property as well as an assignment of rents on the property.

[47] The Court, at para. 81, found that Jenor was entitled to an order for sale under s. 6 given its one-half interest in the property. The Court noted, at para. 65, that where s. 6 applies, "the petitioner is *prima facie* entitled to an order for sale under s. 6 unless I am persuaded there are good reasons to exercise my discretion to refuse an order." The Court was not persuaded that there was "a 'good reason' not to order the sale under [s. 6]": at para. 81.

Conclusions

[48] Like in *Jenor*, the petitioner is the owner of one-half interest in the Property, and the respondent has not demonstrated a "good reason" why an order for sale

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under s. 6 of the *Partition of Property Act* should be refused. This court orders that the petitioner and the respondent are each entitled to a one-half of the lands and premises located at 9509 Steuart Street, Summerland, B.C. and legally described as set out in para. 2 above.

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[49] The respondent shall provide within 60 days hereof to the petitioner for the purposes of the hearing before the register necessary to resolve outstanding issues in this case:

a) an accounting of all rents collected by the respondent in relation to the Property (the “Rents”); and

b) copies of:

   i. all agreements, receipts or other documents with reference to a tenancy or other relationship for occupancy including rental of a trailer pad or other space on the Property;

   ii. all bank statements showing the deposit of Rents or any other monies received by the respondent in respect to any use of the Property; and

   iii. all supporting documents for expenses claimed and completed for maintenance, repairs or use in the form of receipts, invoices, bills, bank statements or other documents showing proof at payment.

[50] The registrar shall conduct a hearing for the purpose of calculating the rental amounts received by the respondent or payable by the petitioner including for occupational rent, and, for the purpose of managing that hearing, the registrar may conduct one or more pre-hearings to ensure necessary evidence is produced in a timely way for efficient management of the hearing. The hearing before the registrar to finalize the accounting between the parties shall be conducted within 120 days of the date of these reasons.

[51] The respondent shall pay to the petitioner occupational rent from August 2019 until the Property is sold in the amount of $1,100, being one-half of the rental value

of the petitioner's suite in the Home fixed by expert witness, Mr. Laydon, noted above.

[52] The Property shall forthwith be offered to sale.

[53] The petitioner shall have exclusive conduct of sale, and will be at liberty to list the Property for sale at a list price to be determined based upon the recommendation of the listing agent, and with any real estate agent or firm that arranges a sale of the Property at a commission of not more than seven percent for the first $100,000 of the gross selling price, and three percent of the balance of the gross selling price, plus tax.

[54] The signature or other approval for any documents of the respondent relating to the sale of the Property shall be dispensed with, and the petitioner may execute, on behalf of the respondent any conveyance or other documents necessary to complete the sale of the Property.

[55] For viewing to the Property as part of the listing process, the respondent shall make her best efforts to facilitate access to all parts or spaces in the Property, including arranging with tenants for timely access to any and all rental spaces in the Property, and assisting to ensure the said rental spaces are clean and presentable for showing as requested by the listing agent.

[56] The net sale proceeds, after all reasonable, necessary, and incidental costs in connection with the sale of the Property, including the commission, conveyancing costs, adjustments and deductions shall be disbursed as follows:

a) to the Petitioner, fifty percent (50%) of the net sales proceeds, plus:

   i. half of the Rents, less property expenses relating to the Property, to be assessed by the Registrar as provided above;

   ii. occupational rent awarded under para. 51 above; and

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iii. judgment in the amount of $15,000 representing funds taken from the petitioner's bank account by the respondent without the consent or approval of the petitioner together with pre-judgment interest as set forth in para. 20 above;

[57] The petitioner shall be entitled to her costs of this proceeding as the successful litigant herein pursuant to *Supreme Court Civil Rules*, Appendix "B", as assessed by a registrar.

[58] The respondent is entitled to the balance of the net sale proceeds remaining after payment of the funds set forth above in paras. 56 and 57 inclusive.

[59] Once an offer to purchase the Property recommended by the realtor has been accepted by the petitioner or by the respondent, or both of them, this court shall be seized of an application to approve the sale of the Property and the terms of the sale. This application to approve the sale shall be fixed for hearing by Supreme Court Scheduling on notice to the parties for 9:00 a.m. on a date not more than seven days after the acceptance of the offer to purchase aforesaid.

[60] Upon the completion of the purchase and sale of the Property, the sale proceeds shall be held by counsel for the petitioner, in an interest bearing trust account.

[61] The judgment made by this court in paras. 20 and 56 above for $15,000 plus interest shall be paid out of trust forthwith to the petitioner, and shall be paid out of the share of the respondent only to the petitioner. These funds are to be paid directly from the respondent to the petitioner forthwith, and if the respondent is unable to pay this judgment by the time the proceeds of sale of the Home are available for distribution, those funds are to be used to pay this judgment. To be clear, the payment of the judgment shall be effected from the respondent's share of the sale proceeds only.

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[62] The balance of the funds in trust, or any portion thereof, may, subject to an agreement of the parties made in writing, be paid out of court at any time, after the judgment referred to above has been paid out.

[63] There shall be a reference to the Registrar for an accounting of all rentals received by the respondent, including:

a) the income received by the respondent in relation to the Billeting Issue and the expenses paid out in relation thereto from 2006 until billeting ended in or around 2015;

b) the income received by the respondent for the Garage Suite, the Carriage House Suite, and the Upstairs Suite and the expenses paid out in relation thereto;

c) the income received by the respondent for the Trailer Pad and expenses in relation thereto;

d) the value of the Occupation Rent received by the respondent, and expenses in relation thereto. Expenses such as heat, light and television or other expenses relating to current usage should not be deducted as these expenses resulted from the use of the Home by the respondent; and

e) the value of interest due on the $15,000 judgment which the respondent has been awarded to pay.

“Ball J.”

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