

2002

File No. 1201-54579  
SFHD 005369

**IN THE SUPREME COURT OF NOVA SCOTIA  
FAMILY DIVISION**

**BETWEEN:**

**MAYEZ KHOURY**

**PETITIONER**

**- and -**

**THERESE KHOURY**

**RESPONDENT**

**[Cite as: KHOURY, Mayez v. Therese 2003, NSSF 011]**

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**D E C I S I O N**

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**HEARD: BY THE HONOURABLE JUSTICE MOIRA C. LEGERE-SERS**

**DECISION: AT HALIFAX, NOVA SCOTIA ON DECEMBER 20, 2002**

**COUNSEL: PHILIP GRUCHY, SOLICITOR FOR MAYEZ KHOURY  
DONALD SCHEWFELT, SOLICITOR FOR THERESE KHOURY**

LEGERE-SERS, J.

***Legal History:***

The Petitioner, Mr. Khoury (b. December 25, 1949) seeks a divorce from his wife Therese Khoury (b. January 1, 1955). The parties were married in Lebanon on July 16, 1972. They lived in Lebanon until late 1973, at which time the Petitioner came to Canada. He was joined by his wife in early spring of 1974. The Petitioner was 22 and the Respondent was 17 at the time they married. There is one child of this 26-year marriage. This child is no longer dependant. The parties separated on January 1, 1998.

The Petitioner seeks a Divorce with an unequal division of property and costs. Initially, the Respondent sought spousal support, exclusive possession of the matrimonial property, a division of property, change of name and costs. In her testimony, she now seeks an equal division of the real property. With an equal division, she indicates she will not require spousal support.

I am satisfied that all the procedural and jurisdiction requirements have been met

and that the grounds for divorce have been proven, based on marriage breakdown established by the fact that the parties had been separated for a period in excess of one year prior to the completion of the proceedings. The Divorce judgement will be granted.

***Real Property:***

The parties jointly purchased the six properties they currently own. Five are commercial and one is a residential property. Except for 2860 Oxford Street, all properties are jointly owned.

- 1) They purchased their first home, 9 Central Avenue in Halifax, N.S., in 1976.
- 2) Two years later, they purchased 3450 Dutch Village Road. 3450 Dutch Village Road became their matrimonial home. 2 Central Avenue is the site of their business (a corner store they both operated).
- 3) 2860 Oxford Street was purchased in 1993.
- 4&5) They purchased rental properties at 64-66 Melrose Avenue and 9 Rosedale Avenue in Halifax, in 1985 and 1988, respectively. These properties have always been income generating assets.
- 6) 16 Lady Slipper Drive, Halifax.

In their Statement of Property, each property is described with an assessed and an estimated value. The statements differ only on 9 Rosedale Avenue. As the testimony evolved and in final submissions, both parties accepted a net value for this property of \$24,647.94 and net values for all the properties in issue.

The Respondent, with the assistance of her daughter, retained an appraiser to assess the value of the properties. The cost of the appraisals for the property will be considered a mutual debt.

The rental properties are the parties only source of income. All of the properties are in the joint names of the Petitioner and Respondent, except for 2860 Oxford Street.

This was an asset in a bankruptcy. The Petitioner decided to purchase this property using a numbered company (2276734 Nova Scotia Limited). The Respondent gave evidence that she was told she was a 50 percent owner. In fact, the Petitioner is a 70 percent owner and she is a 30 percent owner. The property was always used as an income earning asset.

Mr. Khoury testified that he purchased the Oxford Street property in 1993 by remortgaging two of the parties' properties and supplementing that with funds from his mother's estate. The parties ran their corner store out of the Oxford Street property up to November 1, 1998.

This store they operated, Daily Sweets and Variety, they sold to Diana and

Esber Elcheikh, their daughter and son-in-law, for \$51,284. To assist their daughter to finance the purchase of the business, the parties refinanced two of their other properties to obtain approximately \$60,600 in additional mortgage funds. One of their properties was refinanced, increasing the mortgage from approximately \$89,000 to \$135,000. The other was increased from approximately \$112,870 to \$127,500.

\$7,000 of that fund was paid to the City of Halifax for outstanding taxes on the two remortgaged properties. Legal fees amounted to \$9,400; \$2,400 was paid to Lotto 649; \$5,000 was paid to the daughter and son-in-law to assist in incidental expenses. In November, 1998 the Respondent received \$24,428, representing one-half the net profit for the sale of the business assets. The remaining proceeds were used to pay down various accumulated debts associated with the business. Mr. Khoury did not specify what these other debts were, just that approximately \$12,000 was paid towards them. The parties still own the property.

Mr. Khoury testified that he received no net benefit from the sale of this business at the time of sale, although he has a promissory note from his daughter and son-in law. The balance remaining on this note is \$36,619.37. The daughter and husband make the monthly loan payments (six-year term).

Mrs. Khoury does not agree that Mr. Khoury received nothing from the proceeds. She does concede that he received less than she did.

Mr. Khoury and Mrs Khoury experienced some language difficulties when testifying. Both were emotional when testifying. Mr. Khoury knows what debts were paid off, as he was the person in control of the funds. Although his testimony is emotionally charged and not always focused, Mr. Khoury was the primary person responsible for the finances. His information on this point is the more reliable. Mrs. Khoury admits she doesn't have personal knowledge of the payments.

Without more certainty in the evidence, I can only conclude that he did pay down some debt. Both the promissory note and the payment of the proceeds to her will be set off against the respective recipient's share.

***Lebanon Property:***

Mr. Khoury admits he owns property in Lebanon, property he purchased in the 1980's that was intended to be a summer home for the family. It is probable, indeed highly likely, he was assisted in the purchase of that property by joint monies he earned through the family business. He also owns land with his family in Lebanon, land he purchased prior to marriage. Mr. Khoury has provided no valuation for these properties. Ms. Khoury believes one is valued at \$35,000 U.S.. Other than this speculation, this Court has no evidence to draw any reasonable conclusion as to valuation of the property in Lebanon.

***Matrimonial Home:***

The matrimonial home is located at 15 Lady Slipper Drive, Halifax. The Respondent left the home with few possessions. She lives with her daughter, son-in-law and two children in a one-bedroom apartment in Halifax. The Petitioner resides in the matrimonial home and retains the bulk of the matrimonial household possessions.

***Property Taxes:***

The \$10,000 tax payment was paid by a line of credit in 2002. Mr. Khoury will be credited with this payment.

***Money from Mother's Account:***

On August 30, 1991, \$30,120 U.S. was deposited in a joint account with the Royal Bank in the name of the Petitioner and his mother. The money was the Petitioner's mother's money. In 1991, the Petitioner took some of this money and deposited it in an account at the Canadian Lebanese Bank in Beirut for his mother's use. Both he and his mother returned to Nova Scotia in August, 1991. He directed the Canadian Lebanese Bank in Beirut to close his mother's account and had the money returned to Canada.

In 1992, Mr. Khoury took money from his mother's account with the Royal Bank,

an account in his and his mother's name, and placed them in his wife's name in the form of a cheque. His wife deposited the cheque in an account in Lebanon in 1992. Mr. Khoury indicated the intent was to keep this money separate from his business and personal assets in Canada. His mother died in May 1993.

The money from the joint account eventually made its way back to Canada, by way of cheque in the name of his wife, Mrs. Khoury, to assist in the purchase of the property at 2860 Oxford Street, as noted above, on August 11, 1993. Mr. Khoury received a cheque for \$41,184.93 in 1993. \$30,000 was used to pay the mortgages against 9 Central Avenue and 2869 Oxford Street. The balance, he says, was set up in the account of the numbered company set up to own 2860 Oxford Street, to cover the overdraft that had accumulated during the startup of Daily Sweets and Variety.

As noted above, the numbered company is owned 70/30 in favor of the Petitioner. The Petitioner wants a 70/30 split and credit or acknowledgment that reflects in the ultimate division, for the money transferred out of his mother's account in 1992 to assist in the purchase of Oxford Street. The Respondent wants the Court to overlook or go beyond the shareholder's arrangement (ie., 70/30 split) to effect an equal division of that property.

The funds from the Petitioner's mother's account have mingled and have moved in and out of accounts both in the name of the Petitioner and later, separately, Mrs. Khoury, the Respondent. The money from the joint account eventually made its way



into the Respondent's account merged with joint matrimonial and joint business funds and were used for matrimonial purposes and joint business purposes. They will be considered part of the assets to be divided equally.

The clear intent of the parties from the very beginning of their relationship was to work together on the family business and acquisitions to benefit the family. On the evidence before me, each appeared to invest everything they owned in the family, except for the property in Lebanon. There is no other reasonable conclusion to reach but that both contributed their time, skills and efforts to amass the family property. There was no separate interest between Mr. and Ms. Khoury. He now denies his wife participated in the business to the extent claimed by her. Where there is a discrepancy between the two, I prefer the evidence of the Respondent in this regard.

***Money:***

Ms. Khoury alleges that her husband took large sums of money to Lebanon. There is no evidence to prove this.

***Jewelry:***

Mr. Khoury alleges that his wife disposed of gifts of jewelry he purchased for Ms. Khoury. Neither have estimates and Ms. Khoury testified that what jewelry she had she sold to purchase gifts for her husband, gave to her daughter or used for her support during the separation when she was without maintenance. Neither party has made a

serious effort to quantify personal property or jewelry and I am unable to deal with those assets. I have no way of placing a value on these and no ability to incorporate them into the division.

***Safety Deposit Box:***

Ms. Khoury indicates she will give Mr. Khoury the remaining contents of the safety deposit box. She has used some of the coins in that to pay off an income tax debt arising out of the manner in which the parties claimed their income from business and properties. The tax debt was as a result of the manner in which they choose to claim their income and would be considered a matrimonial debt. The coins lost to him were applied to this debt because, at the time, she had no other income.

***RRSP:***

The existing RRSP is a matrimonial asset and Mrs. Khoury will receive one-half the value of this asset, discounted for taxes. Ms. Khoury had an RRSP which the parties already cashed out and that was put against the mortgage for the matrimonial home.

***Vehicles:***

In both parties' statement of property, the vehicles are valued crediting Mr. Khoury with a 1995 Intrepid valued at \$9,000 and Mrs. Khoury a 1996 Sable valued at

\$11,000, which she purchased after the separation. The vehicle she had at the time of separation is not valued in either statement. Her evidence is that this vehicle had no appreciable value and was traded in on the Sable. There is no evidence as to the value of this. In his original affidavit, Mr. Khoury indicates he is satisfied that they both keep the vehicle in their own possession without further setoff. In the absence of an accurate valuation, I will accept that proposition.

***Furniture and possessions:***

The parties have agreed in their latest submissions that this valuation should be \$4,800. Mr. Khoury currently has the benefit of these possessions.

***Spousal Support Entitlement:***

The Respondent worked in the family business commencing 1974. She took care of the cooking and cleaning. She testified she worked 12 to 14 hours a day in the store. She was primarily responsible for child care. Mr. Khoury admits the store was opened from 8:00 or 9:00 a.m. until 11:00 or 12:00 midnight. He is not prepared to admit that Mrs. Khoury spent many hours in the store. She maintains she also cleaned for her brother-in-law in his store after hours. He does not agree this is true.

The Respondent testified that she and her husband worked long hours in the store to support their child and their extended family and to build up their property

portfolio. The Petitioner controlled and managed all the financial affairs of the couple and the Respondent knew little, if anything, of these affairs. She received no payment other than a grocery allowance.

I have no difficulty finding as a fact that both the Petitioner and Respondent invested their hard work as well as all of their time and money in the mutual goal of supporting themselves, their daughter and extended family by working in the business. While Mr. Khoury managed the properties, their roles and contributions as described are indivisible.

Ms. Khoury maintains that there was an agreement on separation that she would receive \$1000 per month for her support. Mr. Khoury agrees that this payment started and he could not always pay this money on time because the tenants did not pay their rent on time. Mrs. Khoury opted for certainty of income on a timely basis and had \$1,000 of the income from the business diverted directly to her rather than wait until Mr. Khoury paid.

Mr. Khoury maintains that the diversion of \$1000 per month unfairly impoverished the assets, causing him to build up a tax debt and he asks that the money she diverted be credited to her from her share of the assets.

She claims that he reneged on his promise to pay her support and that he impoverished the assets by deliberately failing to pay the taxes.

There is insufficient evidence to conclude that his failure to pay the taxes was a deliberate act that impoverished the assets or that she impoverished the assets by the diversion of the \$1,000 per month.

Ms. Khoury received no spousal maintenance other than the \$1000 she ultimately diverted.

Mr. Khoury maintains there is not enough money coming from the business and properties to pay her spousal support and maintain the buildings. He maintains the result of Ms. Khoury taking \$1000 from the rental income is that the expenses exceed the income of the property.

Ms. Khoury is not seeking spousal support if she receives one-half of the property.

Ms. Khoury is clearly entitled to spousal support. It is arguable that, without the division of assets, her entitlement and need could continue for a significant period of time. The parties lived off the income of the business. Mr. Khoury lives in the matrimonial property and as such retains most of the personal property and possessions contained in that home.

***Relief Sought:***

Mr. Khoury does not want the properties sold and divided. He proposes he

keep 15 Lady Slipper Drive, 9 Rosedale Avenue, his land in Lebanon and the numbered company with a 30 percent payment on that property to Ms. Khoury.

Ms. Khoury wants an equal division including the numbered company.

Mr Khoury argues for an unequal division of property and asks the Court to consider the jewelry, unvalued, in his wife's possession; the money he invested in 1993 from his mother's account; the fact that he owns 70 percent of the shares in the Oxford Street property; the fact that Mrs. Khoury diverted and receives \$1000 for her support out of the income of the business; and the loss of the coins in the safety deposit box.

The manner of contribution to the family assets can be determined to be nothing less than an equal contribution. The properties are all in joint names except for the numbered company. Mrs. Khoury has lived outside the matrimonial home and has few of the furniture and possessions since separation. She is an dependant, long-term traditional wife and mother. What she contributed to the child rearing and household as well as her contributions to the business balanced what he contributed by way of financing and management of their business. These roles were interchangeable in their circumstances.

Looking at her request for an equal distribution of all properties in their name, there are adequate reasons to conclude that the lands should be totaled and divided equally resulting in what may be considered an unequal division in her favour, to

equalize the 70/30 share split in the numbered company. Mr. Khoury had control of the division of share structure, he managed the finances and she relied on her husband in these matters absolutely.

There is also the unvalued land in Lebanon, out of reach to Mrs. Khoury.

An equal division of the five properties with a 70/30 split of the numbered company would be unfair, given the manner of acquisition of all assets of the marriage.

No adjustment will be made to accommodate Mr. Khoury's request for an unequal division, as he has not made a case, in accordance with the requirements under Section 13 of the **Matrimonial Property Act**. Both parties have contributed substantially to the acquisition of the assets and Mr. Khoury has properties purchased during the marriage which are not able to be included in a valuation of the total assets subject to division.

The payment of the \$1000 monthly to the Respondent cannot be said to impoverish the assets and create the need for an unequal division. This was a long-term marriage and the Respondent was entitled to support in the interim. I have also not accepted the argument of counsel that this should be counted against her portion of the assets. This monthly payment will be treated as spousal support. They will share the tax burden to her for the period up to the Divorce Judgement. Although she indicates with an equal division of assets she will not seek spousal support, clearly the nature of their relationship demands some interim support and, while she has

established an entitlement, with the division she admits she will not require support.

***Conclusion:***

The parties, through their counsel, have accepted common net values for all six properties. That is the best evidence I have of their values and I adopt them for the purposes of calculating a division. They agree in their submissions on the allocation of 2860 Oxford, 3450 Dutch Village Road and 64/66 Melrose. Mr. Khoury wants to retain the matrimonial home, which he can do if he finances the equalization payment within 30 days of the date of this decision.

The following table illustrates the division and equalization payment. I order an equal division of the total net proceeds of all properties, assets and debts. In the equalization, Mrs. Khoury will be credited with the net proceeds of the sale of the business, Mr. Khoury with the promissory note for \$36,619. The parties have agreed on the apportionment of three of the properties; that is they agree he should retain the numbered company. She should have 3450 Dutch Village Road and 64/66 Melrose Avenue. They do not agree on 9 Rosedale Avenue, 9 Central Avenue or 15 Lady Slipper Drive. I have reviewed their proposals and note that the remaining two properties, 9 Central Avenue and 9 Rosedale Avenue are within \$10,000 net of each other. I have arbitrarily assigned these.



Attached is the schedule allocating the division of property and the equalization payment calculation.

<u>Matrimonial Assets</u>	<u>Value</u>	<u>Mr. Khoury</u>	<u>Mrs. Khoury</u>
2860 Oxford Street	\$178,916.86	\$178,916.86	
3450 Dutch Village Road	89,064.25		\$
		89,064.25	
64/66 Melrose Ave.	39,863.02		
		39,863.02	
15 Lady Slipper Drive	185,262.06	185,262.06	
9 Central Avenue	35,688.97		35,688.97
9 Rosedale Avenue	24,647.94		
		24,647.94	
Furnishings	4,800.00		4,800.00
Proceeds of sale of business	24,428.07		
	24,428.07		
Balance of Promissory Note	36,619.37		36,619.37
RRSP (net)	<u>4,060.00</u>		<u>4,060.00</u>
<hr/>	Total Assets	\$623,350.54	\$445,347.26
	\$178,003.28		
<u>Matrimonial Debts</u>			
Appraisal	\$ 2,660.00		\$

2,660.00			
Taxes Paid	<u>10,000.00</u>	<u>10,000.00</u>	
<hr/>			
Total Debts	\$ 12,660.00	\$ 10,000.00	\$
2,660.00			
<u>Assets minus Debts</u>	<u>\$610,690.54</u>	<u>\$435,347.26</u>	<u>\$175,343.28</u>
Divided by 1/2	\$305,345.27	<u>-130,001.99</u>	<u>+130,001.99</u>
TOTALS		\$305,345.27	\$305,345.27

Equalization Payment Mr. Khoury and Mrs. Khoury \$130,001.99.

Failing payment or transfer of the properties in accordance with this decision within 30 days of this decision or such period of time as is agreed upon in writing between the parties, I reserve for the court the authority to have the matter scheduled before me by either of the parties, to complete the division, thereby reserving the available remedies.

Counsel for the Respondent will draft the order.

Moira C. Legere-Sers J.