Lay v. *Lay*, 2003 NWTSC 11

Date: 2003 03 21
Docket: 6101 02934

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

JAMES MALCOLM CAMERON LAY

Petitioner

- and -

MAUREEN JANIS LAY

Respondent

Application with respect to child custody and support and division of family property.

Heard at Yellowknife, NT on February 3 and 4, 2003.

Reasons filed: March 21, 2003

REASONS FOR JUDGMENT OF THE HONOURABLE JUSTICE V.A. SCHULER

Counsel for the Petitioner: Katherine R. Peterson, Q.C.
No one appearing for the Respondent

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REASONS FOR JUDGMENT

[1] The parties to this action were granted a decree of divorce in 1999. The Petitioner's applications with respect to child custody and support and division of family property came on for trial on February 3, 2003 and proceeded in the absence of the Respondent, who had unsuccessfully requested an adjournment of the trial on January 31.

[2] The only evidence presented at trial was that of the Petitioner. He indicated that he would be content with an order for joint custody but that he would like a provision to give him the final say in the event of a disagreement about the children's welfare or activities. He also sought the day to day care of the two children, boys who are now 11 and 9 years old. They have been in his care since the separation or shortly thereafter, so for approximately five years. Since July 1998 there has been an interim order in place granting him their day to day care.

[3] The children reside with the Petitioner in Summerland, British Columbia. He testified as to their schooling and sports and other activities. He has borne the access

costs so that they can visit with their mother in Tuktoyaktuk. It is well accepted that stability and consistency are important in the lives of children so I have taken that into account and concluded that there is no evidence that the children's best interests would be served by making any change to their living situation. Accordingly, at the conclusion of the trial, I granted joint custody of the children to the parties and ordered that the Petitioner have their day to day care. In addition, because of the difficulties he testified about between the parties on the subject of the children, I ordered that if there is any disagreement between them after consultation on an issue regarding the health, education, welfare or other activities of the children, the Petitioner will have the final say on that issue.

[4] Having heard evidence as to the access that has occurred over the years since the separation, I also ordered that the Respondent have the following access on the following terms:

> (i) one-half the Christmas school break in each year alternating between the first half and the second half of the break;
>
> (ii) summer access from July 15 to August 15 each year;
>
> (iii) reasonable access by telephone, correspondence and e-mail;
>
> (iv) such other access as the parties may mutually agree upon, taking into account school attendance and any school work to be undertaken by the children during any absence from scheduled school days;
>
> (v) at least 30 days before access travel occurs, the Respondent will acknowledge and agree in writing to a travel schedule to be presented to her by the Petitioner, failing which the Petitioner will have the right to decide whether access will take place;
>
> (vi) the parties will not discuss access arrangements in the presence of the children.

This left for determination the following issues:

1. Costs of access

[5] The children have had regular visits with the Respondent over the last few years. They live in Summerland, while she lives in Tuktoyaktuk. The Petitioner testified that he has borne the costs of their visits to Tuktoyaktuk, which for the two children total

approximately $4000.00 per trip. He requests an order that the Respondent pay all or some of those costs in the future.

[6] I have very little evidence about the Respondent's financial circumstances since she did not appear at the trial. The Petitioner testified that, to his knowledge, she has been employed a few times since the separation, but that has sometimes been seasonal work. He testified as well that she has a grade 12 education and is trained as a hairdresser and has also taken art courses. She operated a hairdressing salon out of the matrimonial home for a short period of time during the marriage, earning what the Petitioner described as quite good money. She is Inuvialuit and the Petitioner testified that there are many opportunities for employment for Inuvialuit under the relevant land claims benefits. For example, the company he works for provides such opportunities.

[7] Although the Respondent has two young children in her care from another relationship, there is no evidence before me that she is unable to work or to pay any of the access costs. Accordingly, I see no reason to depart from the usual and I order that the Respondent bear the costs of exercising access to the children or, if the Petitioner is willing to contribute to the costs, she is to pay what remains after his contribution.

2. Child support

[8] The law is clear that both parents have an obligation to support their children. The Petitioner requests an order that the Respondent pay child support. There is no evidence before me of any reason why she cannot pay and accordingly the issue is simply what income should be imputed to her. Although I suspect that it is less than what she might be able to earn, I will order that she be imputed annual income at minimum wage and pay child support to the Petitioner for the two children based on that amount commencing March 1, 2003 and continuing until each child no longer comes within the definition of a "child of the marriage". I direct that counsel file a memorandum setting out the calculation based on minimum wage at the time she files the order.

3. Matrimonial property

[9] The Petitioner came into the marriage with a number of assets and the Respondent apparently with none. Over the years of the marriage, more assets were accumulated. Only the matrimonial home in Tuktoyaktuk was and still is in the name of the parties jointly. The other assets are in the Petitioner's name alone or are not attributed.

[10] As the Respondent did not appear at trial, the only evidence before me as to the property and its value is that of the Petitioner. In his testimony, the Petitioner referred to a number of documents, such as property appraisals, as the basis for his opinion as to the value of some of the property and I have accepted those values and allowed those documents to become exhibits in the trial without their makers being called to testify. On items such as furniture, the Petitioner estimated the value and I accept his evidence in that regard.

[11] The Petitioner seeks that the property value not be equalized, but instead divided such that 60 percent go to him and 40 percent to the Respondent. His proposal would result in the Tuktoyaktuk home being transferred into the Respondent's name and she would be responsible for payment of its mortgage and other expenses and entitled to the income it generates from tenants. She would also keep the furniture located in the house. As a result of the house being transferred to her she would, however, owe the Petitioner the sum of $25,048.80, according to his calculations and based on the 60-40 split.

[12] Attached to these Reasons for Judgment as Appendix "A" is the breakdown of property values with notations submitted by the Petitioner. In Appendix "A", the commencement date is the date of the marriage and the valuation date is the date of separation as defined in s.33 of the *Family Law Act*, S.N.W.T. 1997, c.18.

[13] At the commencement date, the Respondent and his brother each owned a half interest in the house in Summerland, B.C. (the house where he and the children now reside). The commencement date value for that house as shown on Appendix "A" represents his half interest less the mortgage liability. The value on the valuation date represents the fact that he is now the sole owner of that house, having purchased his brother's share some time ago. He has deducted from its appraised value the amount outstanding on the re-financed mortgage as well as anticipated sale costs and capital gains tax. I will refer to those further on. Similarly, for the Tuktoyaktuk house he has deducted from the appraised value the mortgage debt and anticipated sale costs.

[14] The Petitioner has not included in Appendix "A" the following assets: stocks he owned in a Wood Gundy account on the commencement date; stocks he owned in that account on the valuation date; his interest in Portallay Developments Ltd. ("PDL") and his self-funded leave plan. The latter two assets — PDL and the leave plan — came into existence after the commencement date. The Petitioner submits that none of these assets are properly included in the equalization calculations.

[15] Although I take a different view of how the Tuktoyaktuk and Summerland houses should be valued on the valuation date, and of the equalization division, I accept the Petitioner's argument that the Wood Gundy account, PDL and the self-funded leave plan should all be excluded. I will explain my reasons for this further on.

[16] Therefore, after excluding the Wood Gundy account, the parties' respective positions on the commencement date are as follows:

	Commencement Date	
	Petitioner	Respondent
Summerland House	$38,730.00	0
Furniture and vehicles	$14,000.00	
Bank Account	$ 6,319.00	
RRSP's	$ 7,464.00	
Insurance	$ 3,342.00	
Total	$69,855.00	0

[17] As to the valuation or separation date values proposed by the Petitioner, I have concluded that sale costs for the two homes and the capital gains tax for the Summerland house should not be deducted from their value, for the following reasons.

[18] Section 35(1)(a) of the *Family Law Act* provides that in the calculation of net family property, one deducts from a spouse's property value on the valuation date the spouse's "debts and other liabilities on the valuation date". This must mean those debts and liabilities that exist on the valuation date, or at least are reasonably certain to arise because of circumstances existing at the valuation date.

[19] Counsel for the Petitioner submitted a number of cases on the treatment of sale costs and tax liabilities attached to real property. In Ontario, the governing principle is that if the evidence satisfies the trial judge on a balance of probabilities that the disposition of any item of family property will take place at a particular time in the future, then the tax consequences (and other properly proven costs of disposition) are not speculative and should be allowed either as a reduction in value or as a deductible liability: *Ward v. Ward* (1999), 44 R.F.L. (4th) 340 (Ont. Gen. Div.).

[20] In Nova Scotia, the Court of Appeal has approved the deduction of sale costs where there is credible evidence that the property will be sold. If there is no such

evidence, the court should consider the personal and financial circumstances of the spouse and the nature and history of the asset to determine if fairness demands a reduction in value to recognize contingent liabilities or expenses such as disposition costs and capital gains tax that are likely to be a reality: *Prince v. Prince* (1997), 163 N.S.R. (2d) 28, 35 R.F.L. (4th) 328 (N.S.C.A.).

[21] The Petitioner proposes that once the property values are divided, the Respondent should keep as her property the house in Tuktoyaktuk and its furnishings and any adjustment for an equalization payment should be based on their value. He would transfer his interest in the house to her and she would become liable for the mortgage and entitled to any rental income. He does not, however, have a commitment that the bank that holds the mortgage will release him from it. If he cannot arrange to be released from the mortgage, the Petitioner proposes that the Tuktoyaktuk house be sold. Apart from that possibility, he would like the Petitioner to remain in the house so that the children have a familiar home to go to when they visit Tuktoyaktuk. What the Respondent wants as far as the house goes is unknown. It does generate revenue from renters, but whether her financial situation will allow her to maintain it is unknown. All I can say at this point is that there is a distinct possibility that the house will have to be sold but I cannot say whether it is likely to happen.

[22] On the other hand, the Petitioner testified that he plans to keep the Summerland house indefinitely.

[23] I am not satisfied, therefore, that the disposition of either property will take place at a date in the foreseeable future. Accordingly, it is not appropriate to deduct sale costs from the value of those properties.

[24] The Petitioner also submitted that capital gains tax in the amount of $10,777.00 should be deducted from the value of the Summerland house. I understand from his evidence that because the parties can claim only one of the residences as a principal residence, any sale of the Summerland property would trigger the capital gains tax. However, since again there is no evidence that he intends to sell that property, I do not think the deduction is appropriate.

[25] Therefore, only the mortgage liability will be deducted from the appraised value for each of the houses.

[26] With respect to the Petitioner's self-funded leave plan, I conclude that it should not be included in his valuation date assets. The nature of the plan makes this appropriate.

Prior to the separation, the Petitioner entered into the plan with his employer. Under the plan, he was to defer receipt of a portion of his income over a period of six years and then take a year's leave of absence from his job and receive the deferred income in the seventh year. He commenced the plan in 1992 with the intention of taking the seventh year off to go sailing with the family. In 1997, at the time of separation, the deferred income amounted to $89,275.00. In 1999, two years after the separation and in the seventh year of the plan, the Petitioner was obliged either to use the leave or collapse the plan. He collapsed the plan, and used the deferred income, then in the lump sum of $102,375.00, to pay the income taxes owing on it and retire a loan he had obtained from his employer for renovations to the Tuktoyaktuk house. As I understood his evidence, the taxes and the loan disposed of virtually all the deferred income.

[27] The question is whether the fund made up of the deferred income should be characterized as income or as property. Since, had he not collapsed the plan but instead taken the leave, the money in the fund would have been paid as income, it seems to me that it retained its character as income and did not become property.

[28] That leaves the Wood Gundy account and PDL. The Petitioner's counsel made submissions about these assets at trial and then filed written submissions at my request on March 18, 2003.

[29] The Petitioner came into the marriage with his Wood Gundy account, valued at $79,706.00 as at the commencement date. Its value as at the valuation date was $2,540.00. Most of the portfolio was liquidated by the Petitioner between those dates and the money was put into PDL, the company he incorporated in 1992. He is the sole owner of the shares in that company.

[30] The Petitioner testified that the Respondent had no involvement with PDL at all and contributed nothing to it. She was critical of him for investing money in PDL rather than spending it on other things.

[31] PDL became involved in a joint venture building project in Texas. The project looked promising, but ended up in litigation because of a property encroachment. The Petitioner's evidence is that at the date of valuation the appraised value of PDL was $169,336.00, representing the value, without the encroachment, of the property it had invested in with its joint venture partners. He testified that it was, however, not saleable at that time because of the encroachment and the litigation over it. The litigation was not resolved for approximately three and a half years. The Petitioner testified that PDL owes

him money, which it is unable to repay, and that although the joint venture property is rented, the rent pays the taxes and he receives no income from it.

[32] Counsel for the Petitioner argued that the Petitioner's interest in PDL should not be included as an asset for equalization purposes because the Respondent made no contribution to it. Alternatively, she submitted that a better approach might be to include it but regard it as having no value for the reasons outlined above.

[33] In my view, the fact that the Respondent did not contribute to PDL, financially or in the way of work or services, is not determinative. Nor is the fact that she was not interested in, indeed was critical of, the Petitioner's efforts in regard to PDL. The *Family Law Act* recognizes, in s. 36(7) that there is equal contribution, financial or otherwise, inherent in the spousal relationship. The presumption is in favour of equalization of asset value. It would seem contrary to that presumption to pick out specific assets for exclusion on the basis of no contribution or disagreement by a spouse as to the need or desire for that asset, except in unusual circumstances. Nor is there any other section of the *Act* under which that particular asset could be excluded.

[34] However, I will consider PDL as having no value at the valuation date because of the litigation and other problems described by the Petitioner in his evidence. Although the term "value" is not defined in the *Family Law Act*, it was accepted by Vertes J. in *Fair v. Jones* (1999) 44 R.F.L. (4th) 399, [1999] N.W.T.J. No. 17 (S.C.) that the usual benchmark is fair market value. Fair market value is what a willing seller can obtain for the property in an open and unrestricted market from a willing knowledgeable purchaser acting at arm's length: quoted from *Minister of National Revenue v. Northwood Country Club* (1989), 89 D.T.C. 173 (T.C.C.) in *The Dictionary of Canadian Law*, 2nd Edition, Carswell, 1995). At the time of the separation, according to the evidence of the Petitioner, PDL's only value was in the property in Texas, which was not saleable for the reasons referred to above. The fair market value was therefore nothing.

[35] Notwithstanding, however, that the fair market value of PDL may have been nothing at the valuation date, the Petitioner is still left in possession of an asset which may yet have some value. The Petitioner's position is that if I accept that PDL should not be included in his assets, he should also not receive the "credit" that would otherwise be to his benefit from the decrease in value of his Wood Gundy account. That decrease in value as between the commencement and valuation dates is ($79,706.00 - $2,540.00) $77,166.00.

[36] Because of the difficulty in settling on any realistic value for PDL, I will accede to the Petitioner's submission. PDL will not be included in the equalization calculations. Nor will the decrease in value of the Wood Gundy account be included.

[37] Taking into account all of the above, the parties' respective asset value positions on the valuation (separation) date are as follows:

	Valuation Date	
	Petitioner	Respondent
Summerland House	$92,222.00	
Furniture and vehicles	$14,000.00	$7,000.00
Bank Account/Loans	($32,274.00)	
RRSP's	$154,560.00	
Insurance	$2,616.00	
Tuktoyaktuk house	$75,289.00	$75,289.00
Total	$306,413.00	$82,289.00
Less commencement date values	$69.855.00	0
Net family property	$236,558.00	$82,289.00

Equal division is ($236,558.00 + $82,289.00 = $318,847.00 ÷ 2 = $159,423.50)

[38] The next question is whether an unequal division is justified in this case. Under the *Act*, the presumption is in favour of equal entitlement or equalization of net family property. The court may vary the amount of a spouse's entitlement where the court is of the opinion that it would be "unconscionable" not to do so, having regard to the factors set out in paragraphs (a) to (j) of s. 36(6) of the *Family Law Act*. The Petitioner requests that an unequal entitlement be granted, 60 percent to him and 40 percent to the Respondent, on the basis of subsections (g) and (j), which provide for variation of the amount of entitlement where it would be unconscionable not to do so having regard to:

> s. 36 (6)(g) the needs of the children of a spouse and the financial responsibility related to the care and upbringing of the children
>
> (j) any other circumstance relating to the

> (i) acquisition, disposition, preservation, maintenance, improvement or use of property, or
>
> (ii) the acquisition, maintenance or disposition of debts or other liabilities.

[39] The Petitioner submits that he has been the main caregiver to the children since the separation and the Respondent has made no contribution to their financial needs. Further, he submits that he has been the one who acquired and maintained any property accumulated during the marriage. Reference was made to the fact that he alone acquired and concerned himself with PDL. He also looked after the Tuktoyaktuk house, worked on the renovations it required and, since the separation, has ensured that taxes and other payments are made and repairs are performed. He testified that the Respondent has refused to take over responsibility for these matters and calls him when something goes wrong with the house and she wants it fixed. It appears from his evidence that she will pass on information to him, for example, that a tenant is moving out, but leaves it to him to deal with the situation.

[40] The Petitioner also points to the fact that while the parties were cohabiting, he was for the most part the sole financial provider for the family. He also took on some of the responsibility of caring for the children and in particular had to care for them on occasions when the Respondent would disappear. He testified that this would occur sometimes when she was drinking and he would then have to stay home from work and care for the children. His evidence was that she would regularly disappear for a day or two. This might occur, he said, three times in one week and then not again for two weeks.

[41] In general, the Petitioner points to what was described in submissions as the Respondent's "attitude of criticism and non-support" with respect to financial matters, both before and after separation.

[42] The Petitioner has the onus of satisfying the court that it would be unconscionable not to award the unequal entitlement he seeks. Unconscionability is a high threshold. It has been held to mean "outrageous", "shocking", "shockingly unfair" and "repugnant to anyone's sense of justice". It does not mean merely unfair or inequitable: *Fair v. Jones*, *supra*.

[43] I am not satisfied that the evidence in this case meets that high threshold. Although the Respondent has not contributed financially either before or after separation, the statute does not base entitlement on financial contribution to assets. Section 36(7)

recognizes that “inherent in the spousal relationship there is equal contribution, whether financial or otherwise, by the spouse to the assumption of ... responsibilities”, those responsibilities being child care, household management and financial provision. The section refers to these as joint responsibilities.

[44] Thus, entitlement to an equal division of asset value is not contingent on financial contribution. The statute recognizes that contribution is made in other ways.

[45] Although the evidence of the Petitioner leads to the conclusion that the Respondent frequently did not fulfill her non-financial responsibilities to the family, it does not lead me to the conclusion that she made no contribution to the family. There is no evidence that when she was at home she did not look after the children or the home. So while I accept that the Petitioner played a significant role in child care and management of the home, the evidence does not persuade me that the Respondent played no role at all or only an insignificant one. The Petitioner testified that the marriage took place in August 1988, there were some brief periods of separation during 1989 and 1990, the children were born in 1992 and 1993 and the problems with the Respondent’s drinking and disappearing were mainly from 1992 to 1995. They separated in the fall of 1997, after the Respondent pointed a gun at the Petitioner in the presence of one of the children. While it is clear from the evidence that there were a problems throughout with the Respondent’s drinking and anger, there is simply no basis in the evidence upon which to find that she made no contribution at all.

[46] Conduct during the marriage is not a relevant consideration unless it has economic consequences for the spouse or family: see the excerpts from the article “What is Unconscionable” by David Melamed quoted in *Fair v. Jones*. This means that the Court must be wary of using property division as a means to sanction a spouse for conduct that is not relevant to and does not adversely affect the financial health of the family. In this case the Petitioner was able to carry on with his employment and the accumulation of substantial assets despite the difficulties the Respondent caused for their family life.

[47] Nor do I think it is appropriate to take into account the Respondent’s criticism of and lack of support for the Petitioner’s financial investments. Disagreement over money is not unusual and should not affect asset entitlement except perhaps where it has identifiable economic consequences. In this case, although the Respondent was not supportive, it appears that she left it for the Petitioner to handle the money and did not interfere in his decisions except to criticize them.

[48] With respect to the fact that the Petitioner has looked after the expense side of the Tuktoyaktuk home since the separation, insofar as he has expended funds above and beyond what the rental income covers, I think the appropriate way to deal with that would have been by an equalization of any expenditures made to preserve the parties' interest in the home. However, no evidence was presented about the amount of the expenditures so I am unable to make that calculation.

[49] Although the Respondent has not paid child support or purchased any clothing or other necessaries of note for the children since the separation, the Petitioner does appear to be able to support them. So although the Respondent has not contributed, there is no evidence it has had an adverse impact. The children have spent time with her: a month during each summer, eleven days with her at Christmas, two weeks in May. When she was at school in British Columbia, she had them with her on long weekends and every second weekend. Although the Petitioner has paid the travel costs for her access, presumably, since the evidence does not indicate otherwise, the Respondent has borne the cost of feeding and caring for them when they visit her.

[50] I recognize that the Petitioner seeks only a ten percent deviation from equalization. However, that in itself poses a problem because it seems to me that the ten percent should be based on something identifiable if it is to be the basis for an unequal division. Here, it is not clear why the Petitioner says there should be a ten percent adjustment rather than some other amount. In that sense, it is an arbitrary figure.

[51] In these circumstances, although the Respondent is not living up to her financial obligations as a parent, her failure to do so does not persuade me that an equal division of asset value would be unconscionable. For a finding of unconscionability, the conduct must go much further as, for example, in *Merklinger v. Merklinger* (1992), 11 O.R. (3d) 233 (Ont. Gen. Div.), appeal dismissed (1996), 30 O.R. (3d) 575 (Ont. C.A.). In that case, the husband declined, after the separation, to make financial provision for his wife and one of his three children despite the wife's deteriorating financial situation and he schemed by way of a sham trust to defeat her right to what would have been substantial equity in one of their properties. For that reason, the Court dismissed the husband's claim for an equalization payment from the wife.

[52] Equal entitlement in this case may strike some as unfair, but in my view it is not unconscionable. In the terms of the statute, I find that it would not be unconscionable to not award an unequal division.

[53] Accordingly, I order that the parties are entitled to equal shares of the asset values. The Respondent will have ownership of the Tuktoyaktuk house and furniture, which amounts to a total value of $157,578.00 ($150,578.00 + $7,000.00). That is less than the equal division amount ($159,423.50) by $1,845.00, leaving an equalization payment due from the Petitioner to the Respondent in that amount.

[54] I direct that the Petitioner transfer his interest in the title to the Tuktoyaktuk property to the Respondent, provided, however, that he is able to arrange his release from the mortgage on the property. If that release has not been obtained within 120 days of the date these reasons for judgment are filed, the property is to be sold and application made to me for any necessary orders if the parties cannot agree. The Respondent will henceforth be responsible for all mortgage and any other payments relating to the Tuktoyaktuk property and she is entitled to receive the net revenue from that property without claim by, or division in favour of, the Petitioner.

[55] The Petitioner is entitled to the Summerland property, the furniture located there and the other assets referred to in these reasons for judgment, without any claim by or division in favour of the Respondent.

4. Costs

[56] As requested at the hearing of this matter, the Petitioner has leave to speak to costs by filing written submissions within thirty days of the date these reasons for judgment are filed or arranging within that time period to appear before me to speak to the issue.

V.A. Schuler
J.S.C.

Dated at Yellowknife, NT, this
21st day of March 2003

Counsel for the Petitioner: Katherine R. Peterson, Q.C.
No one appearing for the Respondent

6101 02934

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Respondent

REASONS FOR JUDGMENT OF
THE HONOURABLE JUSTICE V.A. SCHULER

Appendix "A" (Proposed by Petitioner)

	Tuk	BC	Furniture and Vehicles	Bank Accounts	RRSP	Insurance	Total
Separation Date Values	124,078	50,645	35,000	(32,274)	154,560	2,616	334,625
Commencement date values	0	38,730	14,000	6,319	7,464	3,342	69,855
Net Values to be divided	**124,078**	**11,915**	**21,000**	**(38,593)**	**147,096**	**(726)**	**264,770**
Petitioner has		11,915	14,000	(38,593)	147,096	(726)	133,692
Respondent has	124,078		7,000				131,078

Notes:

1. Equal division of net value would equal $132,385 per party.
2. Values of real estate are net of mortgage debt and the costs of sale.
3. Details of real property values for this chart are:

Tuktoyaktuk Property:

Appraised value:	265,000
Less Mortgage debt:	114,422
Less costs of sale @10%	26,500
Value:	124,078

Summerland, BC Property

Appraised value:	308,000	
Less net commencement value:	38,730	(68,000 purchase less mortgage of 29,270)
Less mortgage debt	215,778	
Less costs of sale:	41,577	(commission @10% plus cost of capital gains tax)
Value:	11,915	

4. Values for the PDL company of the Petitioner have not been included in the chart as this is not divisible property.

5. Bank accounts include the PCA balances, visa debt and Personal Line of Credit.

6. Petitioner with 60% = 158,862
   Respondent with 40% = 105,908

7. If there is a division of property based on 60% to the Petitioner and 40% to the Respondent, the Respondent would owe the Petitioner $25,170 (The Respondent would have 40% entitlement of net family property, which is equal to $105,908 and she actually has a value of $131,078.00).