

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

TRINH NGOC TRAN

Petitioner

- and -

PHUC VAN MA

Respondent

MEMORANDUM OF CALCULATIONS

[1] On May 18, 2007, I issued Reasons for Judgment dealing with division of matrimonial property between the parties. I decided, among other things, that the value of the matrimonial home at the time of trial was relevant for the purposes of property division. I directed that an appraisal be obtained to provide information about the market value of the matrimonial home as of March 31, 2007. I also directed that the Respondent file a mortgage statement from his financial institution showing the balance of the mortgage on the matrimonial home as of March 31, 2007.

[2] The Respondent's counsel sent a copy of the mortgage statement to the Court with correspondence dated June 6, 2007. The appraisal was filed July 17, 2007.

[3] In Paragraph 77 of my Reasons for Judgment, I gave the parties 14 days from the date of the filing of the appraisal to file any written submissions they wished to make arising from that appraisal. The Petitioner filed her submissions on July 17, 2007. The Respondent has not filed any submissions. I conclude from this that he does not have any submissions arising from the appraisal, nor does he wish to respond to the Petitioner's written submissions.

[4] The purpose of this Memorandum is to quantify the Petitioner's entitlements arising from my Reasons for Judgment.

1. Equalization Payment

[5] According to the appraisal filed on July 18, 2007, the market value of the matrimonial home as of the date of the inspection, June 28, 2007, was \$430,000.00. That is the best evidence available as to the market value of the property as of the time of trial. For the purposes of the calculations, I will use that figure as representing the market value of the property as of March 31, 2007.

[6] The June 6th correspondence sent by the Respondent's counsel states that the mortgage balance on this property, as of March 31 2007 was \$238,551.49. Based on the mortgage statement, that is incorrect: that amount corresponds to the balance of the mortgage as of March 31, 2006. The mortgage balance as of March 31, 2007 was \$229,463.67. The net value of the matrimonial home as of March 31 2007, therefore, was \$200,536.33.

[7] At Paragraph 73 of my Reasons, I set out the various items that I found should be taken into account in the calculations of the equalization payment. For the sake of convenience, I will list those items once again. They include:

- a) rental income from matrimonial home from October 2001 to July 2004 (\$64,600.00)
- b) proceeds from sale of trailer (\$36,000.00)
- c) value of P & T Alterations when it was sold in January 2007 (\$30,000.00)
- d) furniture in matrimonial home (\$5,000.00)
- e) net value of matrimonial home as of March 31, 2007 (\$200,536.33)

[8] The total value of these items is \$336,136.33. Each party is entitled to money or assets of a value corresponding to half of that, namely, \$168,068.17.

[9] The matrimonial home, its furniture, and the rent that it generated are items that are, or were, in the possession of the Respondent. Their value totals \$ 270,136.33.

The remaining assets and monies, which the Petitioner retained, have a total value of \$66,000.00. The Petitioner is therefore entitled to an equalization payment in the amount of \$102,068.16.

2. Interests

[10] For the reasons set out at Paragraph 70 of my Reasons for Judgment, the Petitioner is entitled to interest on the equalization amount for the period between May 18, 2007 and today's date.

[11] The Petitioner submits that this interest should be calculated using the prime business rate, which is 6% per year. This is the rate that is ordinarily used in the calculation of pre-judgment interest, pursuant to section 56 of the *Judicature Act*, R.S.N.W.T. 1988, c. J-1. The Respondent has not presented any submissions on this issue.

[12] The interest component of my decision does not constitute pre-judgment interest. It is interest that I found the Petitioner was entitled to in the peculiar circumstances of this case, where it was not possible for the Court to quantify her monetary entitlement at the time the Reasons for Judgment were issued. The reasoning for granting her interest on the amount, once that amount was quantified, and from the date of the filing of the Reasons for Judgment, is analogous to the reasoning that often underlies an award for pre-judgment interest. I am satisfied that it is appropriate to use the prime business rate in the calculations of the interests in this case.

[13] Interest of 6% per year on a sum of \$102,068.00 represents \$6,124.08 for the full year. Broken down to a per diem rate, it corresponds to daily interest of \$16.78. For the 82 days from May 19, 2007 to August 8 2007 inclusive, this amounts to a total of \$1,375.96 in interests.

3. Costs

[14] The parties have indicated they wish to present submissions as to costs. They can contact the Clerk of the Court within 30 days from today's date to arrange a convenient date to appear before me to make those submissions. If both parties are in agreement that cost submissions can be made in writing, they can notify the Clerk of the Court accordingly within 30 days. If submissions as to costs are to be made in writing, I will issue a memorandum setting time lines for the filing of those submissions. The question of which party should bear the costs of the new appraisal will be addressed at the same time as the rest of the costs issues.

CONCLUSION

[15] There will be a Judgment in favor of the Petitioner for the following amounts:

- a) the sum of \$102,068.16 as an equalization payment; and
- b) a further sum of \$1,375.96 corresponding to the interests on the equalization payment between the filing of my Reasons for Judgment on May 18 up until today's date.

L.A. Charbonneau
J.S.C.

Dated at Yellowknife, NT, this
8th day of August 2007

Counsel for the Petitioner:
Counsel for the Respondent:

Katherine R. Peterson, Q.C.
Art Tralenberg

S-0001-DV-6101-03454

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MEMORANDUM OF CALCULATIONS OF THE
HONOURABLE JUSTICE L.A. CHARBONNEAU
