No. A883136

VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:)	
)	
MAUREEN ELAINE JOKI-HOLLANTI)	
)	**REASONS FOR JUDGMENT**
PLAINTIFF)	
)	**OF THE HONOURABLE**
AND:)	
)	**MR. JUSTICE WOOD**
EERO MATTI JOKI-HOLLANTI)	
)	
DEFENDANT)	

Counsel for the Plaintiff:	Jeffrey A. Rose
Counsel for the Defendant:	Frank G. Potts
Dates and Place of Hearing:	June 28, 29, 30
	July 13
	August 4, 14, 16
	December 11, 1989
	Vancouver, BC

I

This is an action under the Family Relations Act, R.S.B.C. 1979, c.121. At issue are the determination, valuation and division of family assets, and both spousal and child maintenance.

II

The parties were married in 1971. At that time both were employed in the same branch of the Toronto Dominion Bank, where the plaintiff was a teller and the defendant was the assistant manager. The plaintiff had a daughter from a previous marriage, who was then 4 years old.

I accept the plaintiff's evidence that she left her job at the Bank in 1973 as the result of an understanding between the parties, either explicit or implicit and it matters not which, that she would thereafter devote her time and energy in the relationship to making a home for the family, while the defendant would devote his time and energy to providing the financial

requirements of that home. That situation prevailed until September of 1986, when the plaintiff obtained part-time employment in a retail boutique as a sales clerk. I am satisfied, on all of the evidence, that over the years the plaintiff was a good homemaker and the defendant was a good provider.

In 1973 the parties purchased a piece of property in Surrey, on which they built the matrimonial home. That home, which is in joint tenancy, is now in clear title. There is no dispute that it is a family asset, and its agreed upon value is $185,000. The plaintiff continues to reside in that home along with Brent Eero Joki-Hollanti, the only surviving child of the marriage, who was born in May of 1974.

In 1977 the parties became equal shareholders in, and officers and directors of, Valley Truss Limited, a company which specializes in the manufacture of roof trusses. It was the defendant who ran the day to day operations of this company, and who over the years saw to the successful development of the business. As an officer and an equal shareholder, of course, the plaintiff was required to, and did, provide whatever guarantees and other undertakings were necessary to enable the company to enjoy a normal working relationship with its banker. From time to time the plaintiff also did the books of the company, and prepared its income tax returns. But, as is so often the case, the plaintiff's major contribution to the success of this family business lay in her role as a successful homemaker. I have no hesitation in concluding that in that way her contribution to the wellbeing of the family unit, both financial and otherwise, was equal to that of the defendant.

There is no dispute that the company is a family asset. There is, however, a marked difference of opinion as to the value of its shares.

There is also a dispute between the parties as to the proper disposition of the shareholder loan account which represents a liability of the company. The early years of the marriage were tight financially, but as the company prospered the family's standard of living improved. Because the company was essentially the alter ego of its shareholders, their remuneration was organized so as both to foster the continued growth of the company, and to minimize their exposure to income tax. Draws were limited to what was needed to live on, and divided between the parties according to advice received from the company accountant. In the years immediately preceding the breakdown of the marriage, the parties were drawing $3,000 per month, most of which the plaintiff used to run the household. Until the parties separated the defendant drew very little in the way of additional salary or bonuses. The number of draws, and the manner in which they were assigned to the shareholders, had a resulting impact on the balance in their respective shareholder loan accounts. Thus there is now a dispute between them, both as to the proper valuation of the company's shareholder loan account, and as to its proper disposition.

Another corporate venture embarked upon by the parties has not proved as successful as Valley Truss Ltd. The parties each own 25% of the issued shares of J. & E. Cedar Plus Ltd. The other shareholders are the defendant's brother and sister-in-law. From the evidence I gather that the parties are involved in this enterprise primarily as investors. At the time of trial the company owed a substantial account payable to Valley Truss Ltd. Notwithstanding the fact that it enjoyed a 42% increase in sales in the 1988 fiscal year, the defendant testified that the company ceased doing business on the second day of the trial. The 1988 year end balance sheet shows $2,075 due to shareholders. The parties accept that their respective share holdings in this company are family assets. It is not at all clear on the evidence what, if any, value those shares have, and the 1988 year end statement does not indicate what portion of the shareholder's loan account is due to the parties, as opposed to the other shareholders.

In the summer of 1986 the plaintiff suggested that she become a full time employee of Valley Truss Ltd. The defendant was opposed to that idea, so in the fall of that year she took a part time job as a retail clerk in a

ladies fashion shop in Guildford shopping centre. A month later the parties separated for the first time. In January of 1987 the plaintiff began working full time at her job. Her gross pay was then $1040 per month. She has continued at that employment, and at the time of trial was earning $1200 per month gross.

In March of 1987 the parties attempted a reconciliation. The defendant moved back into the matrimonial home. He testified that within a week he realized the marriage was finished, but he stayed on because of the plaintiff's reaction to the first separation. Apparently that event had caused much emotional upheaval, both for the plaintiff and for the children. It is not clear from the evidence just why it was the defendant thought that delaying the inevitable would ease the anguish of the plaintiff and the children, but it is clear that long before he announced his intention to leave that relationship permanently, he began to organize his affairs, and to make plans that would ensure a smooth transition for himself to his new relationship, which was then obviously under way, with Joanne Dafoe, an employee of Valley Truss Ltd.

In August of 1987 the defendant made arrangements with his bank, which is also the bank for Valley Truss Ltd., for funding with which to purchase for himself either an existing home, or a lot on which he could have a home built. He told his banker at that time that he was planning to leave the matrimonial home and that he needed funds to provide himself with a new residence. He eventually purchased a lot in early November, at which time a personal line of credit was extended to accommodate that acquisition.

It was the defendant's evidence that as soon as that purchase had been arranged he intended to tell the plaintiff about it and then to leave the matrimonial home for good, but that the tragic death of their daughter forced him to delay doing so out of a sense of consideration for her feelings. In any event he continued with his plan to build a home on the lot, for which purpose, in addition to the line of credit which he had arranged with his bank, he used over $75,000 of monies and/or materials from Valley Truss Ltd. With this assistance he built for himself and his new family a home which was referred to in the evidence as a luxury, executive style residence.

When the home was completed in May of 1988 the defendant moved out of the matrimonial home and began residing there with Ms. Dafoe and her two children. In September of that year, he obtained a mortgage loan from his bank. The proceeds of that loan were used to pay the outstanding balance on his personal line of credit, and to pay back to the company most of the monies and the cost of materials taken for the construction costs of his new home.

The parties agree that this residence has a market value of $290,000, but they do not agree that it is a family asset, nor do they agree on the real equity value standing to the credit of the beneficial owner(s) of the property.

During the years of the marriage the parties acquired the usual sort of household furnishings, appropriate both to their needs and to the style and location of the former matrimonial home. These furnishings are, of course, family assets. An appraisal of their fair market value was tendered by the plaintiff at a total of $9,540. No contrary opinion as to market value was offered by the defendant, but he suggested in evidence that their replacement value would be more like $14,000.

In addition to the furnishings in the former matrimonial home, there are 2 automobiles, a motorcycle, and a boat and motor, all of which are clearly family assets. Each party has a different view as to the value of these assets, with the exception of one of the cars, a 1983 Cadillac Seville, which has an agreed upon value of $12,900.

The defendant claims as family assets various items of jewellery and a fur coat, all of which were given by him to the plaintiff during the marriage. The value of these items is said by the defendant to total $17,702.

He also argues that he is entitled to one half of the cash on hand, in the amount of $10,400, which was in the joint bank accounts of the parties as of the date they separated. Finally, he claims that the balance of $19,520, owing on his personal line of credit with his bank at the time of separation, amounts to a debt of the marriage, for half of which the plaintiff should be held responsible.

III

(a) The New Residence

Before I consider this, or any other disputed issue in this case, there is an unpleasant matter with which I must deal.

It may well be that, as a matter of law, the defendant's use of monies and material belonging to Valley Truss Ltd., for his personal benefit, amounted to a theft. It matters not that such monies and material were taken with an intention to repay the company, or that repayment was effected before their conversion was discovered. See: Regina v. Smith et al. [1963], 1 C.C.C. 68 (Ont. C.A.), and Regina v. Scallen (1974), 15 C.C.C. (2d) 441 (B.C.C.A.). Nor would the artful use of the shareholder loan account necessarily rebut any inference of fraudulent intent which arises from the manner in which company assets were used.

In any event, what was done was most certainly a fraud on the plaintiff who, as a shareholder, an officer and a director of the company, knew nothing about such use, and would never have approved of it if she had known.

While such conduct, by itself, cannot justify a punitive approach to any of the issues to be determined in this lawsuit, it can, and indeed it does, have an adverse effect on the defendant's credibility. It is reasonable to draw the conclusion that the evidence of anyone capable of such deceit must be regarded with some circumspection.

In addition, I was not favourably impressed with the defendant's truthfulness when he testified before me. During his evidence in chief he repeatedly offered gratuitous comment critical of the plaintiff's role as a mother and a wife during the marriage. The purpose of such comment could only have been to impress the court with the notion that his willingness to put up with her shortcomings, for 17 years harrowing years, demonstrated a selfless and noble commitment to the obligations of marriage from which he now deserved to be set fully free.

During cross examination his answers, while appearing to be responsive, were carefully crafted to offer as little real information as possible. Throughout the trial I heard enough, both from him and from the arguments of counsel, to realize that the same strategy had been employed by him, or on his behalf, with respect to the pre-trial disclosure of information that would have accurately revealed his true financial picture.

In short I found the performance of the defendant as a witness to be quite consistent with what one would expect from a person capable of the dishonesty demonstrated by the manner in which he acquired his new luxury, executive style residence. I say that after making all due allowances for the fact that matrimonial disputes can, and sometimes do, bring out the worst in people, causing them to engage in conduct and to express attitudes which are uncharacteristic of their real persona. Even taking that phenomena into account, I conclude that whenever the evidence of the defendant conflicts with other evidence before me, or with any inferences reasonably to be drawn from such evidence, I should reject his evidence and accept the alternative.

The first issue which must be settled is whether or not the defendants new home is a family asset within s.45 of the Family Relations Act. That section provides:

45. (1)Subject to section 46, this section defines family asset for the purposes of this Act.

(2) Property owned by one or both spouses and ordinarily used by a spouse or a minor child of either spouse for a family purpose is a family asset.

(3)Without restricting the generality of subsection (2), the definition of family asset includes

(a)where a corporation or trust owns property that would be a family asset if owned by a spouse,

(i) a share in the corporation; or

(ii) an interest in the trust

owned by the spouse;

(b)where property would be a family asset if owned by a spouse, property

(i)over which the spouse has, either alone or with another person, a power of appointment exercisable in favour of himself; or

(ii)disposed of by the spouse but over which the spouse has, either alone or with another persons a power to revoke the disposition or a power to use or dispose of the property;

(c)money of a spouse in an account with a savings institution where that account is ordinarily used for a family purpose;

(d)a right of a spouse under an annuity or a pension, home ownership or retirement savings plan; or

(e)a right, share or an interest of a spouse in a venture to which money or money's worth was, directly or indirectly, contributed by or on behalf of the other spouse.

(4) The definition of family asset applies to marriages entered into an property acquired before or after March 31, 1979.

The plaintiff relies on s.45(3)(e). Can it be said that the defendant's new residence was a "venture"? The defendant says not, arguing that a venture, by definition, is limited to a business investment in which there is an element of both speculation and risk. It is also suggested that the decision of Meredith, J. in Bawtinheimer v. Bawtinheimer (1984), 56 B.C.L.R. 25, is determinative of this issue against the plaintiff.

I do not agree that the Bawtinheimer decision has any relevance here. In that case Meredith, J. was concerned primarily with issues of contribution. There clearly had not been any contribution, direct or indirect, by the wife to the purchase price of the condominium, which was the specific asset in issue in that case. Furthermore, that asset was purchased by the husband during a period of time when the parties were separated. Following their reconciliation, the parties kept all of their respective assets strictly separate. In my view the facts of that case are quite distinct from those before me.

I see no reason to give the word "venture" a restrictive interpretation such as that suggested by the defendant. By that I mean that I see no need to restrict its meaning exclusively to that of "...an undertaking attended with risk, especially one aiming at making money; business speculation...". In my view any investment, in which there is an element of risk, and which has the potential for profit, even though its primary function may be to serve some other purpose, may qualify as a venture under s.45(3)(e) of the Act. Whether it does qualify or not, in any given case, will depend upon all of the circumstances in which it was acquired and used.

There is evidence before me that at one point, shortly after the construction of the new house was completed, the defendant delayed replacing the interim financing he had obtained from the bank with a residential mortgage, because he felt he might be able to sell the property and make a quick profit. Under cross-examination he admitted that he originally purchased the lot either as an investment or as a property on which to build a new home for his girlfriend.

I have no doubt that if the right opportunity had presented itself, the defendant would have sold the new residence and simply gone on to build another. Eventually he would have wound up with a home in which to live with his new family, but I doubt that an opportunity to make a profit would have been missed if it had been a reality. In that sense I think that the investment of the defendant in this new residence qualifies as a venture of the sort referred to in s.45(3)(e) of the Act.

The next matter to be considered is whether or not the plaintiff can be said to have made any contribution, direct or indirect, to this venture.

As a starting point in this inquiry, I do not think I can overlook the involuntary contribution which she made as a result of the monies and inventory which the defendant took from Valley Truss Ltd., and applied to the construction of his new residence. As the effective owner of one half of the companies assets, one half of that which was taken was necessarily hers. In my view that was an indirect contribution to the venture.

I am also satisfied, on all of the evidence, that had it not been for the substantial financial worth of Valley Truss Ltd., half of which belongs to the plaintiff, the defendant would never have been able to borrow the balance of the funds required to purchase the lot and to build his new residence. That financial worth, from the bank's point of view, included the plaintiff's guarantee of the company's indebtedness. That financial worth was also enhanced by the assignment of the proceeds of the defendant's $250,000 policy of life insurance, from the plaintiff to the company's bank, an arrangement for which the defendant sought and obtained the plaintiff's consent in the spring of 1987, shortly after he had moved back into the matrimonial home following the first separation. In my view the plaintiff's role as a shareholder, officer and director of Valley Truss Ltd. resulted in an indirect contribution by her to the venture in question.

In November of 1987, shortly before the defendant purchased the lot upon which he built his new residence, he announced to the plaintiff that due to the indebtedness of the company they would have to reduce their monthly draw from $3,000 to $2,000. The evidence shows that shortly thereafter he began substantially to increase the amount of his own drawings from the company.

Some brief facts will illustrate the extent of that increase. For the 1987 tax year the defendant filed a return showing an income of $18,000. In a Customer's Financial Statement dated 12th November, 1987, and signed by him, the defendant reported to his bank that his annual income was $80,000. The following year he reported an income of $59,800 on his tax return. In a personal credit application filed with the bank in May of 1988, he again

reported an annual income of $80,000. In a Residential Mortgage Application, which he signed on 10th August, 1988, the defendant set his gross annual earnings at $95,000.

The reduction in the family's draw from the company, in late 1987, followed by the dramatic increase in the defendant's drawings, had the effect of shifting the income of the company into the hands of the defendant. Such a shift was necessary if the defendant was to be able to meet his new obligations, one of which was the cost of his new residence. To the extent that the plaintiff suffered the adverse effect of this shift in the distribution of company income, she made an indirect contribution to the cost of the venture.

I have no hesitation in finding that the plaintiff indirectly contributed money or money's worth to the venture represented by the defendant's new residence, and that accordingly that residence is a family asset.

The defendant has argued that, in the event his new residence should be declared a family asset, the court ought to order a reapportionment of that asset in his favour pursuant to s.51 of the Act. A variety of technical arguments are offered in support of such a redistribution. These submissions overlook the fact that the underlying rationale for a reapportionment under s.51 is fairness. In light of the deceit which surrounded the defendant's acquisition of this asset, he is in no position now to invoke any doctrine of fairness, whether it be statutory or equitable, in an effort to salvage for himself the fruits of that deceit.

Finally, it is argued on behalf of the defendant that the real value of the equity in this asset is not properly reflected by simply deducting the balance owing on the mortgage registered against the property from its agreed upon market value. The inspiration for this submission is again the $75,394 in monies and material, which the defendant took from Valley Truss Ltd. to build the house, most of which he has since repaid. It is argued that since the plaintiff is a half owner of the company, she is liable for at least one half of that portion of the construction costs, which are now subsumed in the outstanding mortgage registered against the property. There is no merit in this submission.

(b) Valley Truss Ltd.

Each of the parties produced an expert who opined as to the value of the company's shares. Each opinion, in turn, depended in part on different opinions obtained as to the fair market value of the real property, together with improvements, owned by the company. Thus the starting point in determining this issue is an examination of the real estate appraisals.

The plaintiff filed as an exhibit, pursuant to s.10 of the Evidence Act, the written report of Penney and Keenleyside Appraisals Ltd. under the signature of Mr. Barry J. Ray. Mr. Ray has been an appraiser since 1966. Much of his experience has been with commercial properties. He was not required for cross examination purposes, and so quite properly was not called as a witness. I have read his report. His conclusions are clearly set out and the reasons given for them clearly expressed. Mr. Ray concludes that a fair market value of the land and improvements owned by the company is $500,000.

The defendant filed the written appraisal report of Cunningham and Rivard Appraisals Ltd., under the signature of Mr. Paul Kundarewich. His conclusion is that the fair market value of the company's lands and improvements is $390,000.

Mr. Kundarewich was produced at trial and cross-examined very effectively by counsel for the plaintiff. As a witness I found him to be argumentative if not combative. He had not brought his rough notes with him and thus was unable to explain how he had arrived at a number of conclusions

relating to each of the two approaches used by him to reach his final opinion.

I agree with the submission by counsel for the defendant that because of the difficulty in finding comparable properties, for use in a direct sales approach to value, there is a subjective element in each of these appraisals which exceeds that normally found in such reports. Notwithstanding the difficulty which that fact poses, I prefer the report of Mr. Ray. I have compared the description of the lands and premises owned by the company, which is basically the same in each report, with those of the comparable properties which each expert utilized in the income approach. On the whole I find that those properties used by Mr. Ray, both for calculating annual rental, and for determining an appropriate capitalization rate, to be closer in description to what the company owns than those relied upon by Mr. Kundarewich.

In so far as the cost approach is concerned, much depends on the replacement cost of the improvements, and on the proper level of depreciation to attribute to them in their existing state. Mr. Ray used the reproduction costs provided by the Marshall Valuation Services, prepared by Marshall and Swift. This guide, which is updated regularly, has standard tables of construction costs for all types of buildings. They include all financing charges and a reasonable profit for the builder. In addition there is a local multiplier chart specific to many geographical areas in this province.

Mr. Kundarewich, when asked to account for his substantially different estimate of such costs, said that he relied on his experience in the field and on his "judgement". He was of the view that the Marshall and Swift valuations are little more than an indicator. He relied more heavily on the actual costs incurred when the improvements were built in 1986.

While I would not expect the Marshall and Swift values necessarily to be appropriate in all circumstances, I prefer them in this case to the "experience" and "judgement" of Mr. Kundarewich. When it comes to estimating the hypothetical, there can be no perfect formula, but before I would reject the standard tables which have gained wide acceptance in the world of appraisers, I would expect some cogent reasons as to why they would not be appropriate in the circumstances of this case. Something more tangible than the vague and subjective notion of "experience" and "judgement", without reference to anything more specific, would be required, and that was not forthcoming from Mr. Kundarewich.

I accept the opinion of Mr. Ray that the fair market value of the lands and premises owned by the company is $500,000.

That being so the next step is the determination of the fair market value of the shares of the company. The plaintiff submitted in evidence the report of Mr. Michael D. Bowie, a chartered accountant and a partner in Peat Marwick. Mr. Bowie has specialized in business valuations for 10 years.

Mr. Bowie used three approaches in arriving at his opinion; capitalized earnings, notional sale and lease back, and notional sale of assets. The results were consistent within an acceptable range. Mr. Tonelli, the company accountant, agreed on cross examination that the multiples used by Mr. Bowie, to capitalize the maintainable after-tax earnings of the company in the 1st approach, were conservative.

The defendant challenges Mr. Bowie's opinion on a number of grounds. Firstly, his use of the Penney and Keenleyside valuation of the lands and improvements owned by the company is questioned. I have already expressed my view on that appraisal, and accepted its result.

Secondly, it was suggested that Mr. Bowie's opinion is based on the assumption that a $12,000 account receivable, owing by J. & E. Cedar Plus Ltd., was collectible. Mr. Tonelli expressed the view that this was unlikely since that company is said to be worthless. Nobody explained why J. & E. Cedar

Plus Ltd. was worthless, or why it should be going out of business, as the defendant testified it had done on the second day of trial. I have already pointed out that its income from sales grew by over 42% in the 1988 fiscal year. In any event, even if that account is not collectible, I do not believe that, in the overall picture of this company, the size of that receivable is such as would be likely to affect the value of its shares in the eyes of a prospective purchaser. The process of business valuation, like that of real estate appraisals, is by no means a perfect or a certain science. No prospective purchaser could reasonably expect a share price that is capable of precise mathematical rationalization. That is why there is necessarily a range of values given in such an opinion. Accepting a value near the midpoint of that range gives recognition to the fact that there are both positive and negative contingencies associated with any attempt to fix a value on such an intangible commodity.

Finally, it was argued that Mr. Bowie's opinion is flawed because it is based on the assumption that $60,000 per year would be an acceptable salary for a competent manager, Mr. Tonelli having suggested in his evidence that somewhere between $75,000 and $100,000 would be required for such purposes. Exhibit 27 is a draft valuation using the income approach prepared by Mr. Tonelli "for discussion purposes only". It is not dated, nor does it indicate with whom it is to be discussed. It was prepared on the basis of an estimated management salary of $60,000. On cross examination, Mr. Tonelli had no good explanation for why he would have used such an estimated salary in his own projections, if he was prepared to reject it in his later evidence. Taking into account the size of the company's operations, including the number of employees, the annual sales and the straightforward industrial process it employs to produce its product, I have no hesitation accepting Mr. Bowie's evidence that $60,000 is a reasonable salary level for competent management.

The defendant relied on Mr. Tonelli as his expert on the value of the shares of Valley Truss Ltd. He too is a chartered accountant of considerable experience, but his experience has been more in the field of general accounting than that of Mr. Bowie, who has specialized in business valuation for at least the last ten years. Unlike Mr. Bowie, Mr. Tonelli is not a member of the Canadian Institute of Chartered Business Valuators.

On the whole of the evidence, I prefer Mr. Bowie's opinion as to the value of the shares. I find that value to be $400,000.

I turn to the company's shareholder loan account. A shareholder loan, owed by a company which is a family asset, is itself a family asset. In this case, however, the defendant argues that because the plaintiff had no day to day role in the management or the operation of the company, the defendant should be entitled to treat the shareholder loan account as his own. I do not accept this submission. As I have previously indicated, I am satisfied that between those services which she in fact provided to the company, and the contribution which she made to its success through her efforts as a home maker, the plaintiff was entitled to an equal share of its income. I see no basis on which the underlying principles of fairness, found in s.51 of the Act, would permit a reapportionment of this asset in favour of the defendant.

The evidence with respect to the shareholder loan account balance, at various times relevant to this litigation, is a bit difficult to piece together. The 1987 year end financial statements show the sum of $65,800 owing to the shareholders. However, the evidence of Mr. Tonelli, the company accountant, suggests that just prior to that year end the company declared a bonus of $18,000 payable to the defendant, which he did not, in fact, draw. Thus it appears that, notwithstanding the financial statements filed as part of Ex.2, the total amount owing to shareholders as of 31 August, 1987, was $83,800.

Although the 1987 year end statements for the company show only the total balance owing to the shareholders, the shareholder loan account was

broken down separately for each of the shareholders in the company books. As of the 1987 year end, those books apparently showed a balance of $39,925 owing to the plaintiff. By the following year end, $28,000 had been paid out to her, leaving a balance of $11,925. From the evidence it would appear that a further $4,000 was paid out to her prior to the s.44 declaratory judgement issued by Prowse, J., on 18th November, 1988, leaving a present balance apparently due to her of $7,925.

The same company records also apparently showed a balance of $25,875 owing to the defendant on his shareholder loan account, as of 31 August, 1987. However, with the additional $18,000 bonus for that year, which he did not draw, the balance then owing to him was, in fact, $43,875. The evidence suggests that he had one draw of $3,000 before he began to take both funds and material from the company for the purpose of building his new residence. Once that project was completed, his shareholder loan account would have been "overdrawn" by $34,520. However, prior to 18th November, 1988, he repaid the company a total of $30,000, leaving a shortfall of only $4,520 in that account as of the date of the triggering event.

The plaintiff argues that the balance owing to the her, in the shareholder loan account, as of the date of the triggering event, ought to be augmented by the amounts drawn from that account by the defendant for the purpose of building his new residence, and the resulting balance divided evenly between the parties. I do not agree. I have already found that those lands and premises, which the defendant acquired for himself in the manner previously described, are a family asset. If I were now to find that the proceeds of the shareholder loan account, which were used to pay part of the cost of that residence, were a separate and distinct family asset, the result would be to give the plaintiff the benefit of a portion of the same asset twice.

The evidence before me demonstrates that as of the date of the triggering event, 18th November, 1988, there was a net balance owing by Valley Truss Ltd., to its shareholders, of $3,405. That is the amount which I find to be the value of that family asset.

(c) J. & E. Cedar Plus Ltd.

As previously noted, the shares of this company are clearly a family asset. No evidence was lead to show the value of those shares. It may be that they have little value. The plaintiff is, at any rate, the owner of only 25% of the issued shares of that company, a number in fact equal to that held by the defendant. It seems that I can do little more than confirm that fact. There is, as between the plaintiff and the defendant, no issue in connection with these shares that can usefully be disposed of under the provisions of the Family Relations Act.

Furthermore, there is no evidence before me as to the breakdown of the shareholder loan account of that company, and thus I have no way of determining how much of the sum of $2,075, if any, is owed to the plaintiff or to the defendant. In those circumstances, I am not able to determine what portion, if any, of this shareholder loan is a family asset.

(d) Furnishings in the Former Matrimonial Home

I accept the opinion evidence from Maynards Appraisal Company Ltd. (Ex.6), as to the fair market value of these furnishings. In my view, that is the correct approach to take when attempting to value such assets for the purpose of a distribution under the provisions of the Family Relations Act.

(e) Motor Vehicles and the Boat and Motor

As noted earlier, these items are clearly family assets. The parties

agree on the value of the 1983 Cadillac at $12,900. I see no reason why the defendant should be allowed to resile from his own estimate of the value of the 1962 Thunderbird, which he set at $7,500 in a Customer's Financial Statement which he signed at the request of his bank in November of 1987.

As to the boat and motor and the motorcycle, I agree with the argument advanced by the defendant that the value shown for these assets in the same Customer's Financial Statement cannot be relied upon, because that value relates to a total of three motorcycles plus the boat and motor. In those circumstances, the best evidence as to value would appear to be that of the defendant. I find that these three items combined have a value of $1,750.

(f) Jewellery and Fur Coat

It is not easy to reconcile the various authorities cited by counsel on the issue of whether gifts of jewellery and other items of a personal nature ought to be considered family assets. Again it appears to depend on the circumstances of each case. On the whole I prefer the reasoning of Finch, J. in Wallace v. Wallace, unreported, Van. Reg. No. D51159, May 21, 1985. In the absence of any evidence suggesting that these items were given conditionally, or that they were given, and accepted, with the clear intention that they would be used "for a family purpose", or that they were intended, at least in part, to represent an investment by the parties with a view to later realization, I see no reason to conclude that they were family assets. In the absence of such evidence, the plaintiff has succeeded in discharging the onus put upon her by s.47 of the Act.

(g) Cash on Hand as of the Date of Separation

The date upon which this asset must be determined and valued is the date of the triggering event, which was 18th November, 1988, the date on which Prowse, J. declared, pursuant to s.44 of the Act, that the parties had no reasonable prospect of reconciliation. It would appear from the evidence that as of that date the plaintiff had on hand the sum of $12,870, and that these funds represented the remnants of that cash which she had on hand when the defendant left the matrimonial home in May of that year, together with whatever she had managed to save from her own income and from the maintenance which she received in the interim.

There is no reason that I can see why these funds ought not to be considered a family asset, and I so hold.

(h) Family Debts

At the time of separation, the defendant owed $19,522 to his bank on his personal line of credit. He testified that this line of credit was utilized to purchase, amongst other things, the 1983 Cadillac, the shares in J. & E. Cedar Plus Ltd., various furnishings for the matrimonial home, and some jewellery for the plaintiff. The cancelled cheques, offered in support of this testimony, all date from at least 20 months prior to the separation.

For the reasons given earlier, I am not prepared to accept the evidence of the defendant in this respect without proof that the balance owing as of the date of separation did, in fact, arise as a consequence of purchases made for the benefit of the family. In light of the way in which the defendant was spending money to the benefit of himself and his new family, in the 14 months before he finally left the matrimonial home, such proof at minimum would entail a completed accounting of all of the outgoings and incomings of his various bank accounts for at least three years prior to the date of the triggering event.

In the absence of such proof I am not prepared to find that the outstanding balance on the defendant's personal line of credit, as of the date of separation, is a debt of the marriage.

IV

On 18th November, 1988, the defendant was ordered to pay the sum of $500 per month by way of maintenance for the remaining child of the marriage, Brent Eero Joki-Hollanti. He does not object to an order that such maintenance continue. The plaintiff argues that this payment should be increased to $1,000 per month.

The children of a marriage are the joint responsibility of the parents. The plaintiff does have an income and she therefore is able to, and does, contribute financially to the maintenance of her son. She also contributes to his care and well being on a daily basis in ways that cannot be measured in terms of dollars. While it is impossible to put a value on the effort and love which she puts into that daily obligation to provide for his care and well being, I do not think that there is evidence before me from which it could be concluded that the plaintiff's contribution to the support of her son exceeds that of the defendant to the extent suggested. On the whole of the evidence, I would not increase the maintenance award in respect of the child of the marriage beyond that ordered by Prowse, J. on 18th November, 1988.

That brings me to the plaintiff's claim for maintenance. The order of Prowse, J. was that the defendant pay to the plaintiff the sum of $500 per month until further order of the court. The defendant was also ordered to pay all property taxes and insurance premiums on the former matrimonial home. In addition he has apparantly maintained the family's medical coverage. He now argues that the plaintiff no longer requires financial support, and he asks for an order dispensing with further maintenance. The plaintiff seeks a permanent order increasing her monthly maintenance from $500 to $2,000.

Both parties have filed statements of their required monthly expenditures. The plaintiff's rounds off at $3,556, the defendant's at $6,148.

The aim of the court in a trial such as this is to provide for the self-sufficiency of the parties after a marriage break up. Ideally that self-sufficiency will be at, or close to, the standard of living which both enjoyed during the marriage. In the years immediately prior to their separation the plaintiff enjoyed a standard of living which reflected the hard work which both she and the defendant had put into their marriage. Now that the marriage is finished she is entitled to the same chance as the defendant has to continue to enjoy that standard of living.

The plaintiff is 43 years of age. The employment which she now has does not earn for her anything like the sort of income required to provide her with a standard of living such as that which she previously enjoyed. It produces, in fact, an income which falls below the poverty line. Because she devoted her time and energy in the marriage to the role of homemaker, she has lost the benefit of what work related skills she had in 1973, when she left her job at the Toronto Dominion Bank. If she is to enhance her present capacity to earn income she will require time in which to retrain old skills lost through time, or to learn new skills more appropriate to the market in which she must now find work.

The law expects that both of these people will get on with their new lives independently of each other. But for the plaintiff the future is much more uncertain than it is for the defendant. She faces both financial and emotional insecurity. She faces the ordeal of having to start all over again at a time of life when she had every reason to expect that she could look forward to greater security as well as to the other well earned rewards of a life of hard work. It is in recognition of the hard work of the past that the law confirms her right to one half of the family assets. It is in recognition of the fact that she embarks upon her new life from a position of inequality, that

the law gives her the right to look to the defendant for continuing assistance for a reasonable period of time.

I have reviewed the plaintiff's list of monthly expenses for herself and her son. Some of the amounts listed are clearly unreasonable. I am of the view that her monthly requirements, after taxes, are more properly in the range of $2,300, inclusive of those obligations for which the defendant is presently paying, namely property taxes, house insurance and B.C. Medical insurance. An income in that range will enable her to budget for an annual vacation and to maintain a life style reasonably proximate to that which she enjoyed before the marriage fell apart.

The gross monthly income required to produce $2,300 net of income tax is $2,900. With her own income, and the maintenance which the defendant pays for their son, there remains a shortfall of $1,200 per month.

The defendant must provide that shortfall. The only remaining question is for how long.

While the plaintiff has obviously suffered emotionally, as a result of the marriage break-up, there is no evidence that she is permanently disabled from pursuing the sort of re-training or education which will better equip her to compete in today's job market. However, in addition to her employment, which she must maintain throughout such re-training, she will be the person primarily responsible for the day to day care of the child of the marriage for at least the next two to three years. In those circumstances, her opportunity to become self sufficient, at a standard of living approximating that which she previously enjoyed, will be delayed. In the circumstance, I am of the view that the plaintiff is entitled to receive maintenance for herself, at the rate of $1,200 per month, for 4 years from the date of judgement.

The defendant complains that the plaintiff did not take any, or any adequate, steps to begin the process of becoming self sufficient, prior to the time of trial, and that she has therefore lost the right to claim continuing maintenance. I do not agree. As I have pointed out, she obviously suffered an emotional set back, not only as a consequence of the break down of the marriage, but also as a consequence of the extent to which she was deceived by the defendant. Notwithstanding that upset, she continued to work, and to maintain a home for their son. On the basis of my conclusion as to her real monthly financial needs, it is obvious that since 18th November, 1988, she has not had the resources needed to embark upon any formal educational program. In the circumstances, I cannot say that she has failed to take appropriate steps to become self sufficient.

The defendant also suggests that the plaintiff should convert her interest in the family assets into cash which could then be invested, thus producing enough monthly income for her to live "comfortably". That submission assumes two things, neither of which is acceptable to my view of the law. The first assumption is that all that is required to satisfy the mandate of the law is that the plaintiff be made reasonably "comfortable" in life, without any regard for her own sense of pride or self worth as an independent person. The second is that her reasonable opportunity to become self sufficient, at a standard of living similar to that which she previously enjoyed, ought to be self financed.

Finally, it is suggested on behalf of the defendant that he cannot afford to pay maintenance to his former wife. I have already mentioned the statements in writing by the defendant in which he claims to be making $80,000 to $95,000 per year. I do not recall any credible evidence that suggests anything to the contrary. In addition, Ms. Dafoe, his common law wife, is paid in excess of $26,000 per year by Valley Truss Ltd. In March of 1989, the defendant applied for an extension of his line of credit at the bank to enable him to purchase a $32,000 sports car. In his statement of average monthly expenses, filed as part of Ex.2, he shows monthly car payments of $960. The

mortgage payment for his new luxury, executive style home, is apparently $2,394 per month.

If the defendant is unable to afford the monthly maintenance payments which I have set, it can only be because he apparently assumed that when his marriage broke up he automatically acquired the right improve his own standard of living at the expense of his obligations to the plaintiff. Nothing could be farther from the truth.

V

The following is a list of the assets which either are admitted, or I have found, to be family assets, together with the value which attaches to each, again as a consequence of either my findings or admissions:

(a) Former matrimonial home	$185,000
(b) Defendant's new residence	$ 92,000
(c) Valley Truss Ltd. - shares	$400,000
(d) Shareholder loan	$ 3,405
(e) Furnishings	$ 9,500
(f) 1983 Cadillac	$ 12,900
(g) 1962 T-Bird	$ 7,500
(h) Motor-cycle, boat, etc.	$ 1,750
(i) Cash on hand	$ 12,870
Total Value	$724,925

One half of that total is $362,463, and I find that to be the value of the plaintiff's interest, as a tenant in common, in the family assets, as of the 18th November, 1988.

As I understand the position of counsel, with the exception of the Valley Truss Ltd. shares, the parties are agreeable to dividing these assets between themselves. In any event, I have the jurisdiction under s.52 of the Act to declare the ownership of, or right to, family assets, and to otherwise vest title in such a way as to give effect to both the intent of the legislation and my findings. Thus I order that title to the former matrimonial home, and to the 1983 Cadillac Seville, be transferred to the plaintiff absolutely. I also order that the funds on deposit to the credit of the plaintiff as of 18th November, 1988, namely $12,870, and the furnishings in the former matrimonial home, vest in the plaintiff absolutely.

I order that title to the 1962 Thunderbird, the motorcycle, and the boat and motor vest in the defendant absolutely.

Subject to the rights of the first mortgagee, and what I propose to direct with respect to the security required to ensure that the plaintiff is paid the balance due her under the terms of this judgement, title to the property civically known as 17890 21st Avenue, in Surrey, shall vest in the defendant absolutely.

That brings me to the shares in Valley Truss Ltd. The balance due to the plaintiff, after transfer of the above mentioned assets into her name alone, is $142,192. It would not be reasonable to expect the defendant to be able to arrange to pay that sum to her immediately. Some time must be allowed to enable him to make the arrangements necessary to pay out the plaintiff, without bringing financial ruin upon either him or the company. On the other hand it is desirable that this matter be finalized as quickly as possible, so that both of these people can be rid of each other and get on with the rest of their lives.

Taking into account these conflicting considerations, I believe that it would be reasonable to give the defendant up to two years in which to pay the plaintiff the balance of her interest in the family assets. However, for the protection of the plaintiff, there must be conditions which attach to that accommodation.

The plaintiff will forthwith execute all forms required to transfer her shares in Valley Trust Ltd. to the defendant, but I direct that the shares and the share transfer forms be held in escrow until such time as the plaintiff has been paid the full outstanding balance of the amount owed to her by the defendant for her interest in the family assets. If the parties are unable to agree on who should act as escrow agent, the court will appoint one. The escrow agent will hold the share certificate(s), together with the executed share transfer forms until satisfactory proof of payment of the outstanding balance due to the plaintiff under the terms of this order has been made, at which time both shall be released unconditionally to the defendant.

To secure payment of the outstanding balance of $142,192, I order that the defendant execute and register a second mortgage, in favour of the plaintiff, against his property at 17890 21st Ave., Surrey. That mortgage will be in the principal amount of $142,192, and will carry interest at the rate of 14%, compounded semi-annually. It will have a term of two years, after which time the full balance owing, including principal and interest, will become due and payable. In the interim it may be paid off in whole or in part without penalty. The lis pendens which is presently lodged against the title to the defendants property will remain in place pending registration of the mortgage.

I make no order as to the shares in J. & E. Cedar Plus Ltd.

There will be an order that the defendant pay maintenance in the amount of $500 per month for the benefit of Brent Eero Joki-Hollanti, so long as he shall remain a child of the marriage.

There will be an order that the defendant pay maintenance in the amount of $1,200 per month to the plaintiff, commencing the 1st day of April, 1990, and continuing thereafter on the first day of each month up to and including the 1st day of March, 1994.

There may well be details that need to be worked out to ensure that the spirit of this judgement is implemented. I hope that I am not being overly optimistic when I say that counsel ought to be able to agree on anything which I may have overlooked. Both parties may have liberty to apply if some insolvable problem does arise.

Finally there is the matter of costs. During the trial I expressed some concern over the apparent lack of co-operation between counsel on matters of pretrial disclosure. Counsel indicated that they wished to speak to the matter of costs after judgement had been rendered.

It seems to me that this is a case where each party should bear their own costs. However, there may well exist grounds upon which both parties could argue to the contrary and counsel, if they feel strongly about the matter, are of course entitled to set it down for argument. But before doing so I would ask each to consider what there is to be gained by re-opening old

arguments which should never have erupted in the first place. It seems to me that it is time to bring this litigation to an end.

Vancouver, B.C.,

14th March, 1990