

NOVA SCOTIA COURT OF APPEAL

Citation: *Baker v. Baker*, 2012 NSCA 24

Date: 20120302

Docket: CA 347495

Registry: Halifax

Between:

Thomas Arthur Baker

Appellant

v.

Joyce Marie Baker

Respondent

Judge: The Honourable Justice Joel E. Fichaud

Appeal Heard: February 14, 2012, in Halifax, Nova Scotia

Subject: Setting aside a separation agreement under s. 29 of *Matrimonial Property Act*, R.S.N.S. 1989, c. 275

Summary: The parties separated in 2005 after a 34 year marriage. They signed a Separation Agreement that gave the matrimonial home to the husband and said that neither party would receive spousal support. The husband's only income after separation was a CPP disability pension of about \$10,000 per annum. Soon after separation the wife took employment at \$39,000 per annum, and has earned that amount since. The divorce proceedings began in 2009. The judge, in 2011, held that the Separation Agreement was unconscionable or unduly harsh under s. 29 of the *Matrimonial Property Act*, and set aside the provisions respecting the allocation of property and denial of spousal support. The judge directed the husband to pay an equalization payment of \$88,360 for the matrimonial property and determined that the husband would be entitled to spousal support after the separation, but did not determine the amount of spousal support. The husband appealed to the Court of Appeal.

Issue: Did the judge commit an appealable error in setting aside the provisions of the Separation Agreement?

Result: The Court of Appeal ruled that the judge erred by failing to consider whether the net effect of the Separation Agreement as a whole was unduly harsh to either party. The net effect of the Separation Agreement's provisions respecting property allocation and spousal support was not unconscionable or unduly harsh to either party, but reflected an equitable sharing of the economic consequences of the marriage and its breakdown, with neither party exploiting the vulnerability of the other. The Court of Appeal allowed the appeal and overturned the judge's ruling that set aside the Separation Agreement.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 13 pages.