

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Whitman v. Hammond*, 2023 NSSC 234

Date: 20230724

Docket: 1201-74449

Registry: Halifax

Between:

Lana Clare Whitman

Petitioner

v.

Gregory Elliott Hammond

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Elizabeth Jollimore

Heard: July 14, 2023

Summary: Husband sought unequal division based on the parties' debts and his use of his inheritance during the marriage. Duration of the marriage and the wife's contribution meant wife was entitled to a significant share of the assets but the husband's inheritance was so great that it would be unfair or unconscionable to divide it equally.

Key words: Family, Divorce, Property Division, Unequal Division, Date and Manner of Asset Acquisition, Debts

Legislation: *Matrimonial Property Act*, R.S.N.S. 1989, c. 275, subsection 4(1),
subsection 13(b), subsection 13(e)

***THIS INFORMATION SHEET DOESN'T FORM PART OF THE COURT'S
DECISION. QUOTES MUST BE FROM THE DECISION, NOT THIS
LIBRARY SHEET.***

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Whitman v. Hammond*, 2023 NSSC 234

Date: 20230724

Docket: 1201-74449

Registry: Halifax

Between:

Lana Clare Whitman

Applicant

v.

Gregory Elliott Hammond

Respondent

Judge: The Honourable Justice Elizabeth Jollimore

Heard: July 14, 2023

Counsel: Whitman, self-represented
Greg Hammond, self-represented

By the Court:

Introduction

[1] Lana Whitman and Greg Hammond married in 2015. They'd cohabited for almost 4 years before marrying. They separated in mid-2021. Their marriage was childless.

[2] I granted the parties' divorce at their hearing: my jurisdiction was established, and Ms. Whitman proved the marriage had permanently broken down and there was no prospect of reconciliation.

[3] The primary issue is how their property should be divided under the *Matrimonial Property Act*, R.S.N.S. 1989, c. 275. Ms. Whitman wants an equal division and Mr. Hammond wants property divided unequally, relying on subsections 13(b) and (e) of the *Matrimonial Property Act*.

Identifying and valuing the property

[4] Before property is divided assets must be classified and valued.

[5] I find that all the assets are matrimonial and subject to division. Ms. Whitman's RRSP contributions (which she accumulated before the marriage) are matrimonial assets because they fall within the definition's terms, being "acquired [. . .] before or during their marriage": subsection 4(1).

[6] The most significant asset is the jointly owned matrimonial home. Both parties relied on its current assessed value of \$506,100. The home is not mortgaged. Mr. Hammond had obtained a computer-generated market value "guesstimate" of over \$600,000 but said he entered the wrong information about the home in the computer program, so the computer-generated value was wrong.

[7] Ms. Whitman valued the household contents remaining in the matrimonial home at \$10,000. Mr. Hammond valued them at \$20,000, excluding his jewellery. I also exclude the value (unknown) of the items Ms. Whitman said she left in the matrimonial home. No formal valuation was prepared. Without any evidence to support either value, I fix the value of the household contents at \$15,000.

[8] Ms. Whitman brought an RRSP worth approximately \$16,000 to the marriage. Its current pre-tax value is \$16,837.40.

[9] When the relationship ended, Mr. Hammond had a Mercedes which he later sold for between \$6,000 and \$7,000. Ms. Whitman had a Mazda, which she said was worth \$5,000 to \$6,000. Neither party contested the value the other placed on their car. In each case, I have averaged the range of values given.

[10] Mr. Hammond has 2 judgments from Small Claims Court totalling \$5,700. One judgment arises from a loan he made and the other, from a dispute with a contractor. While he said he has written off these debts, they remain owed to him.

[11] The value of the matrimonial assets are shown below.

| Asset | Value |
|--|--------------|
| Matrimonial home (less notional sales commission of 5%, HST of 15% on the commission, and notional legal fees of \$1,150 inclusive of HST) | 475,829.25 |
| Household contents | 15,000 |
| Ms. Whitman's RRSP (discounted by 1/3 for income taxes) | 11,224.93 |
| Vehicles | 12,000 |
| Small Claims Court judgments | 5,700 |
| Total value of matrimonial assets | 519,754.18 |

The property division

[12] Subsection 12(1) of the *Matrimonial Property Act* says that matrimonial assets are to be divided in equal shares at the end of the marriage. In limited circumstances described in section 13, the *Act* allows an unequal division of matrimonial assets and a division of non-matrimonial assets. According to section 13, this may occur where I'm satisfied that an equal division would be "unfair or unconscionable" having regard to certain enumerated factors.

[13] In *Harwood v. Thomas* 1981 CanLII 4167 (NS CA), Chief Justice MacKeigan said, on behalf of the unanimous court, at paragraph 7, that equal divisions "should normally be refused only where the spouse claiming a larger share produces strong evidence showing that in all the circumstances equal division would be clearly unfair and unconscionable".

[14] In *Young*, 2003 NSCA 63, Justice Bateman spoke for a unanimous Court of Appeal when she wrote at paragraph 15:

The inquiry under s. 13 is broader than a straightforward measuring of contribution. The predominant concept under the **Act** is the recognition of marriage as a partnership with each party contributing in different ways. A weighing of the respective contributions of the parties to the acquisition of the matrimonial assets, save in unusual circumstances, is to be avoided.

[15] Her Ladyship said that any division other than an equal one will be granted “only where there is convincing evidence that an equal division would be unfair or unconscionable.”

[16] In determining if an equal division would be unfair or unconscionable, I’m restricted to considering the factors listed in section 13. If this is an appropriate case to divide matrimonial assets unequally, I must apply the very same considerations listed in section 13 in determining what division would be fair and conscionable: *Donald*, 1991 CanLII 2563 (AD).

Do debts justify an unequal property division?

[17] I conclude that the debts and liabilities of each spouse and the circumstances in which they were incurred do not make it unfair or unconscionable to equally divide the assets under subsection 13(b).

[18] Mr. Hammond bears the burden of proving that each spouse’s debts and the circumstances in which the debts were incurred make it unfair or unconscionable to equally divide the assets.

[19] To discharge this burden, I must know what each spouse’s debts were and the circumstances in which the debts were incurred.

[20] While each party filed 2 Property Statements, neither party disclosed the amount of their debt at separation in either of their Statements.

[21] Mr. Hammond’s debts in October 2022 totalled \$25,873.80. On his more recent Property Statement his debts totalled \$17,372.62. He didn’t know the exact amount of his debts when the couple separated. In response to my questions about his debts at the date of separation, Mr. Hammond estimated his debts totalled approximately \$18,000.

[22] Ms. Whitman's debts in August 2022 totalled \$27,200. On her more recent Property Statement her debts totalled \$48,959.55. She didn't know the exact amount of her debts when the couple separated. In response to my questions about her debts at the date of separation, Ms. Whitman estimated her debts in the approximate range of \$16,250 to \$18,750.

[23] Subsection 13(b) refers to the amount of debt, and the circumstances in which the debt was incurred. Each spouse said the debts were incurred for family purposes and offered examples. Ms. Whitman provided receipts for her payment of moving costs, house inspection and cleaning costs of \$7,240.56. Mr. Hammond provided bank records. His bank statements showed, for the most part, purchases made by direct debit, not debt. He provided no credit card statements or receipts which showed how the debts were incurred. The parties were left with roughly equivalent amounts of debt at separation, and the debts were incurred for family purposes.

[24] I find that Mr. Hammond has not discharged the burden of proving, on a balance of probabilities, that it would be unfair or unconscionable to divide matrimonial assets equally having regard to the amount of debt and liabilities and the circumstances in which they were incurred.

Does the date and manner of the assets' acquisition justify an unequal property division?

[25] I conclude that the date and manner of asset acquisition make it unfair or unconscionable to equally divide the assets under subsection 13(e). I have already noted that more than 90% of the value of the assets originated with Mr. Hammond's inheritance. Because he used his inheritance for matrimonial purposes, the assets are matrimonial and subject to division.

[26] The Court of Appeal affirmed an unequal division of property in *Green v. Green*, 1989 CanLII 8851, where Mr. Green brought almost all of the assets to the marriage and Ms. Green brought virtually nothing. She made no financial contribution to the home and there was no evidence that she ever maintained the home in the usual manner. The Greens' marriage was "short [2 years] and vitriolic".

[27] More recently, in *Boulet v. Rushton*, 2014 NSSC 75, Associate Chief Justice O'Neil divided matrimonial assets unequally (75% to Ms. Boulet and 25% to Mr. Rushton) where Ms. Boulet owned almost all the property to be divided

when the couple married. Most appreciation in the value of the matrimonial property since the parties married is attributable to the home she owned when they married. During the parties' 7-year marriage, "Mr. Rushton's contribution to the maintenance and growth of the matrimonial assets, other than the matrimonial home, was non-existent", though he contributed equally to improving and maintaining the home.

[28] Both Mr. Hammond's parents had died by the end of December 2013, and, as their only child, he was their sole heir. Mr. Hammond inherited a car, life insurance proceeds of £14,000, cash assets worth approximately \$550,000, and their household contents and personal effects. Registration of their home had already been transferred into his name many years earlier. When it sold in 2020, the house fetched almost \$700,000.

[29] At least 91% of the value of the assets at separation – and possibly as much as 95% - originated with Mr. Hammond's inheritance. This calculation is made without regard to either party's debts which, as I've noted, are roughly equal.

[30] Ms. Whitman and Mr. Hammond began cohabiting in 2011. They separated in late 2013 and re-united in 2014. Following their 2015 wedding, they cohabited until mid-2021. In total, their relationship endured for 6.5 – 7 years. During this time, Ms. Whitman worked, and she contributed to the household costs. Unlike *Green and Boulet v. Ruston*, this isn't a case where Ms. Whitman made no contribution, though most of the value of the matrimonial assets stems from Mr. Hammond's inheritance and his investment of it into the marriage.

[31] Because so very much of the matrimonial wealth is attributable to Mr. Hammond's inheritance, I find that it would be unfair or unconscionable to equally divide the value of the matrimonial assets and I order that the value be divided unequally in Mr. Hammond's favour. He will retain 75% of the value of the assets and she will retain 25%. Considering the value of the assets, this means that Ms. Whitman will retain \$130,000. Of this, \$16,725 is comprised of her RRSP and her car. The remainder will come from Mr. Hammond.

[32] Each party will be solely responsible for the debts in their name. Mr. Hammond will be responsible for all debts relating to the home.

[33] I order Mr. Hammond pay Ms. Whitman \$113,275 no later than October 31, 2023. Ms. Whitman will provide a quit claim deed for the home, in escrow, to a solicitor on behalf of Mr. Hammond if he is making this payment.

[34] If Mr. Hammond does not make this payment by October 31, 2023, the house will be listed for sale on the following terms:

- a. The listing shall continue until the house is sold.
- b. Ms. Whitman must provide Mr. Hammond with the names of three accredited real estate agents by October 15, 2023. Mr. Hammond will choose the listing agent from the names provided.
- c. If Mr. Hammond does not receive three names from Ms. Whitman, he will choose an accredited real estate agent as the listing agent.
- d. The solicitor representing Ms. Whitman in the sale of the matrimonial home shall be chosen by the listing agent (the agent's lawyer) and shall not be a solicitor or firm that has been previously engaged by either Ms. Whitman or Mr. Hammond.
- e. Mr. Hammond will continue to have exclusive possession of the matrimonial home and will continue to be responsible for all costs relating to the matrimonial home until the sale of the home closes.
- f. Mr. Hammond will, at all times, cooperate with the listing, showing and sale of the matrimonial home as a condition of his continued exclusive possession.
- g. The court expressly reserves its jurisdiction to review the husband's exclusive possession if there are allegations that establish in evidence that Mr. Hammond's cooperation is not forthcoming.
- h. The court expressly reserves its jurisdiction to review the terms and manner of the matrimonial home's sale and to direct that the sale proceeds other than as hereby ordered, including its sale by auction, sheriff or other expedited format.
- i. If the matrimonial home has not sold by March 15, 2024, an order may issue that it be sold in an expedited format, such as an auction. The court may further adjourn the matter if there is an accepted offer with a closing date after March 15, 2024.

- j. If an agreement of purchase and sale is entered into and the closing date is after March 15, 2024, the court reserves the right to adjourn the review hearing and reserves its jurisdiction until such time as it can be determined whether the sale will proceed.
- k. Ms. Whitman will have the exclusive right to accept or reject any offer received and shall provide Mr. Hammond with a copy of any offer, whether accepted or not, within eighteen hours of receipt.
- l. Ms. Whitman will provide Mr. Hammond with a copy of her acceptance or rejection of any offer within eighteen hours of its execution.
- m. If an offer, acceptance, or rejection is made on a weekend, Ms. Whitman's communication to Mr. Hammond will be by 10 a.m. on the first working day after the weekend.
- n. The net proceeds of sale are the proceeds of sale after the usual adjustments on closing as between the purchaser and vendor, real estate commission, legal fees and disbursements on migrating title and closing, payment of the outstanding mortgage. The net proceeds of sale shall be held in trust by the agent's lawyer and shall be distributed as follows to divide the matrimonial property:
 - a. \$113,275 to Ms. Whitman, and
 - b. the remainder to Mr. Hammond.

Elizabeth Jollimore, J.S.C.(F.D.)

Halifax, Nova Scotia