

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Citation: *Boman v. Boman*,  
2009 BCSC 1435

Date: 20091021  
Docket: E071538  
Registry: Vancouver

Between:

**Marvin Jefferies Boman**

Plaintiff

And

**Nadeen Mia Boman**

Defendant

Before: The Honourable Madam Justice Gray

**Reasons for Judgment**

Counsel for the Plaintiff:

T.L. Jackson  
C. Howard

Counsel for the Defendant: In Person

N.M. Boman

Place and Date of Trial/Hearing:

Vancouver, B.C.  
June 1, 2, 4, 5,  
June 9, 11, 12 and  
June 19, 2009

Place and Date of Judgment:

Vancouver, B.C.  
October 21, 2009

## INTRODUCTION

[1] The parties to this family law proceeding began cohabiting in May 2000 and were married about 4½ years later, on December 31, 2004. They ceased cohabiting just over two years after the marriage, in January 2007, and were divorced on January 29, 2009. They have no children.

[2] Both parties have their own businesses. The plaintiff ex-husband is a software developer and sales manager working primarily in selling repossessed vehicles. The defendant ex-wife works in the field of physical fitness and nutrition, and appears as a television personality.

[3] The issues in this case are the identification, valuation and division of family assets.

[4] Mr. Boman is the sole shareholder of four companies. The companies are Repo.com Enterprises Inc. ("Repo.com BC"), Dot Net Support Inc. ("Dot Net Support"), Sold Com Inc., formerly named Repo.com Inc. ("Sold Com"), and Time Foreclosure America Inc. ("Time Foreclosure"). Sold Com and Time Foreclosure are inactive companies. I refer to Repo.com BC and Dot Net Support together as the "Active Companies", to Sold Com and Time Foreclosure together as the "Inactive Companies", and to all four companies together as the "Companies".

[5] During most of the period that they lived together, the parties lived in an apartment on Nelson Street in Vancouver, B.C. ("Nelson Street Apartment"). Mr. Boman now owns an apartment on Burrard Street in Vancouver, B.C. ("Burrard Street Apartment"), which he purchased using proceeds from the sale of the Nelson Street Apartment.

[6] Ms. Boman takes the position that all the Companies are family assets, and that the Burrard Street Apartment is a family asset. Ms. Boman seeks equal division of these assets.

[7] Mr. Boman takes the position that the Companies and the Burrard Street Apartment are not family assets. Alternatively, he argued that if the court finds that the Companies and the Burrard Street Apartment are family assets, they should be reapportioned 100% in favour of Mr. Boman, and that in any event, the assets have little or no value. Mr. Boman also seeks a release of the Certificate of Pending Litigation (“CPL”) which Ms. Boman registered against the Burrard Street Apartment, and a release of the order made under s. 67 of the *Family Relations Act*, R.S.B.C. 1996, c. 128 (“*FRA*”) restraining the disposal of assets. Mr. Boman does not seek a declaration that any assets currently held by Ms. Boman are family assets, nor does he seek any portion of them.

[8] The plaintiff ex-husband, Mr. Boman, was represented by counsel at trial. The defendant ex-wife, Ms. Boman, acted in person.

[9] The issues proceeded to an eight-day trial. Ms. Boman advised that she was ill on the day scheduled for the third hearing day, and the trial did not proceed on that day. Ms. Boman was articulate and conducted appropriate cross-examinations at trial. However, she elected not to make any final submissions, on the basis that she would leave the issues with the court.

## **CHRONOLOGY**

### **(a) Before Cohabitation**

[10] Mr. Boman was an entrepreneur from a young age. He operated a paper route at age five. At age six, he used the database of customers acquired through his paper route to generate customers for his lawn-cutting “business” and later for selling other items.

[11] In 1989, when he was 19 years old, Mr. Boman began working for Accurate Effective Bailiffs Ltd. and its selling arm Wekan Holdings Ltd. (both referred to simply as “Accurate Bailiffs”).

[12] In 1995, Mr. Boman began developing software applications to simplify collection services, reduce the need for employees, track customers, improve billing structures and speed up the process for recovering funds. Mr. Boman used the domain name “bankrepo.com”. Mr. Boman is self-taught in the area of software development.

[13] In 1998, Mr. Boman began developing software applications on his own for gambling and dating websites, as well as ad classification.

[14] In 1999, Mr. Boman left Accurate Bailiffs. He worked in the Caribbean for about six months developing dating and gambling websites, but returned to Canada following the abrupt decline in the stock market value of technology companies (often referred to as the “Dotcom Crash”).

[15] When the parties met, Ms. Boman was a student and lived with her parents. She worked part-time at her parents’ café, earning \$8 per hour.

**(b) During Cohabitation**

[16] The parties began cohabiting in May 2000. Mr. Boman was about 30 years old, and Ms. Boman was 23 years old.

[17] In May 2000, Mr. Boman was self-employed, developing software interfaces for dating and gambling software, and working on a software application for collection agencies to simplify and speed up collection services. He also designed websites that gave the appearance of high levels of internet traffic, and sold advertising space on these sites. This concept is no longer commercially viable, because advertisers are now aware of the ways in which web traffic can be generated artificially.

[18] In May 2000, Ms. Boman was enrolled at Simon Fraser University in a Bachelor of Business Administration program. She was in the “co-op” program, and worked full time every other term. She worked most weekends at her parents’ café and later at a restaurant.

[19] Mr. Boman owned a house on Santa Monica Drive, in Delta, B.C. Ms. Boman moved from her parents' home to live with Mr. Boman in the Delta home. Ms. Boman did not bring any assets to the relationship.

[20] On September 5, 2000, Mr. Boman entered into a contract to purchase the Nelson Street Apartment for \$138,000, with a closing date scheduled for December 1, 2000. The Nelson Street Apartment is a condominium unit in downtown Vancouver, B.C. Mr. Boman paid an initial deposit of \$8,000. On December 1, 2000, the vendors agreed with Mr. Boman to delay the completion date to April 30, 2001, and Mr. Boman increased the deposit to \$16,000. That left a purchase price balance of \$122,000.

[21] On December 21, 2000, Mr. Boman sold his house in Delta for \$294,000. The balance payable to him after discharge of the mortgage was about \$50,000. He used \$16,000 in respect of the deposit, and invested the balance in his business.

[22] In the period before the closing date of the Nelson Street Apartment purchase, Mr. Boman was not able to raise the \$122,000 balance of the purchase price. He had suffered losses in the Dotcom Crash. He arranged for his mother to buy the Nelson Street Apartment and let him live there with Ms. Boman.

[23] On April 27, 2001, Mr. Boman assigned his right to purchase the Nelson Street Apartment to his mother, Ms. Maria Bouwman. (Mr. Boman's mother spells her last name differently from Mr. Boman.) That same day, Ms. Bouwman completed the purchase of the Nelson Street Apartment, and it was registered solely in her name.

[24] Mr. Boman agreed with his mother that he would pay her rent of \$1,100 per month, on the basis that, if he fully repaid her the money she paid for the Nelson Street Property, she would leave the property to him in her will.

[25] There were tenants in the Nelson Street Apartment in April 2001 when Ms. Bouwman became owner. Mr. Boman and Ms. Boman moved in around August

2001. They lived there for the period of about five and one-half years until they separated in January 2007.

[26] From about August 2001 to August 2003, Mr. Boman paid his mother \$1,100 per month as rent. Over that two-year period, Mr. Boman therefore paid a total of about \$26,000. Ms. Bouwman then agreed to wait for her money, and Mr. Boman stopped paying rent. Ms. Bouwman paid the property taxes and assessments for improvements to the condominium building. Mr. Boman paid the maintenance fees.

[27] Mr. Boman paid for \$30,000 in renovations to the Nelson Street Apartment. Most of the renovation work was contracted out, after failed attempts by Mr. Boman and Ms. Boman to do the renovations themselves.

[28] Ms. Boman did not make any direct financial contribution to the Nelson Street Apartment.

[29] In 2001, Mr. Boman acquired the rights to the domain name "repo.com" from his uncle's business, Easy Provider Domain Name Services, for \$55,000. Ms. Boman did not contribute any money to this purchase.

[30] In the period prior to 2001, Mr. Boman acquired approximately 10,000 URLs. The term "URL" refers to "uniform resource locator", meaning an address for locating information on the internet, and is used interchangeably in these reasons for judgment with the term "domain name".

[31] Dot Net Support was incorporated in Nevada on June 17, 2002. Mr. Boman is and always has been the sole shareholder of Dot Net Support.

[32] At some point around 2002, Mr. Boman commenced an application for a registered trademark in "repo.com". The application is opposed by Accurate Bailiff's main competitor, Asset Inc., which claims registered trademarks in "repo depo" and other terms using the prefix "repo".

[33] For six to eight months in 2002, Mr. Boman attempted to develop "repo.com" into a "stand-alone" website, on which collection agencies could advertise

repossessed assets, and interested purchasers could pay subscription fees to learn where particular repossessed assets were located. Mr. Boman hoped to make the venture viable through the collection of fees from advertisers and subscription fees from potential purchasers. This venture was unsuccessful, primarily because Mr. Boman was unable to achieve sufficient internet traffic to the website to attract advertising revenue.

[34] Around the end of 2002, Mr. Boman stopped trying to attract advertisers for a stand-alone repo.com website, and instead turned his attention to developing software for a web-based application providing information for the recovery, storage and sale of repossessed assets.

[35] Mr. Boman's income in 2002 was about \$50,000. Ms. Boman's income was about \$23,000.

[36] In or around 2003, Mr. Boman incorporated Time Foreclosure. Mr. Boman intended to develop a foreclosure network using this company, but so far he has not taken any steps to do so. The company has not generated any revenue, and Mr. Boman intends to let it lapse.

[37] Sold Com was incorporated in Nevada on September 30, 2003, under its original name, Repo.com Inc.

[38] Repo.com BC was incorporated in British Columbia on December 2, 2003.

[39] Dot Net Support was incorporated in British Columbia on December 5, 2003.

[40] For the period of about one year from December 2003 until December 2004, Mr. Boman worked as sales manager for one of Accurate Bailiffs' competitors, Autofleet Services.

[41] In 2003, Mr. Boman's line 150 income was \$7,800. Ms. Boman's income was about \$20,000.

[42] As of December 31, 2003, Repo.com BC's balance sheet showed that the company had a net operating loss of about \$1,000, and about \$50 more in assets than liabilities. Dot Net Support's balance sheet showed that the company had an operating loss of about \$11,000 and about \$4,000 less in assets than liabilities.

[43] In June 2004, Ms. Boman graduated from Simon Fraser University with her Bachelor of Business Administration, with concentrations in marketing and management science. She also obtained a co-op designation and a certificate in computer science.

[44] As at December 1, 2004, Mr. Boman had about \$90,000 in his personal account with Van City.

[45] In 2004, Mr. Boman's line 150 income was \$8,000 and Ms. Boman's line 150 income was about \$44,000.

[46] As of December 31, 2004, Repo.com BC's balance sheet showed that the company had a net operating loss of about \$4,800.

[47] As of December 31, 2004, Dot Net Support's balance sheet showed that the company had a net income of about \$35,000.

**(c) During Cohabitation After Marriage**

[48] As stated earlier, the parties married on December 31, 2004.

[49] Mr. Boman has used various techniques to develop databases of people he considers good prospects for purchasing repossessed assets. For example, he developed a matchmaking website called "swingers.net", reasoning that individuals who were interested in the "swingers" lifestyle would likely have sufficient income and interest that they might buy repossessed assets. There was no fee for using the swingers.net website, but potential users had to be approved by Mr. Boman, which enabled Mr. Boman to include them in his database.



[50] In addition to employing Mr. Boman, Dot Net Support employs one software developer and system administrator, Mr. Matt Lyon. From the period of about six months from about April 2005 to October 2005, Ms. Boman, together with Mr. Lyon and Mr. Boman, conducted advertising campaigns for gambling websites through Dot Net Support. Ms. Boman spent a few hours a day, five days a week, on this venture. The campaigns generated revenue of approximately \$10,000 US, which was split equally among the three of them. Mr. Boman considered this to be the only time Ms. Boman made any direct contribution to the Companies. Ms. Boman's position is that she made further contributions.

[51] Over the period of 2004 through 2006, Ms. Boman obtained certifications from the British Columbia Recreation and Parks Association as a group fitness instructor, a weight training instructor, a personal trainer, and a yoga instructor. She also obtained first aid and CPR certificates.

[52] Around May 2005, Mr. Boman returned to work for Accurate Bailiffs as sales manager, a position he continues to hold. Most of the sales of repossessed assets are now to members of the public, rather than to automobile dealerships, which was the case in the past. Accurate Bailiffs paid Repo.com BC a share of the monthly net profit on sales of assets in exchange for the services provided through Mr. Boman, which included supervising the sales team, advertising, setting up timelines, and collecting money and taxes. At that time, the share which Repo.com BC received was 50%. In addition, Accurate Bailiffs paid Dot Net Support a monthly fee of \$6,500 for support of the internet, and developing new programs. Accurate Bailiffs also provided a vehicle to Mr. Boman.

[53] Ms. Boman had little direct involvement in the business of the Companies. On a few occasions, Ms. Boman assisted by uploading ads onto the website, taking messages and paying bills. Occasionally, she also assisted by approving couples for the swingers.net website, thinking of domain names, and promoting the "repo.com" brand by handing out items at nightclubs such as donuts in boxes

bearing a repo.com logo. At times, Ms. Boman would bring lunch to Mr. Boman while he was at Accurate Bailiffs' office, and move cars which were on the lot.

[54] In June 2005, Ms. Boman set up a sole proprietorship called Firm Body Fitness, providing personal training services. Mr. Boman assisted Ms. Boman with marketing concepts for her business. He helped in finding a name and a telephone number with the suffix "firm", and in designing a logo. His office designed and built the architecture for the Firm Body Fitness website. Mr. Boman provided hosting and technical support for the website. He estimated that these services, if his company had charged for them, would have cost Ms. Boman a minimum of \$7,000. In addition, between 2004 and April 2007, Mr. Boman paid for two of Ms. Boman's business phones at a cost of \$180 per month. Over the same period, Mr. Boman also paid \$10 per year for the "firmbodyfitness.com" domain name, and for approximately 30 other related domain names.

[55] In 2005, Mr. Boman's line 150 income was \$12,000 and Ms. Boman's line 150 income was about \$23,000.

[56] As of December 31, 2005, Dot Net Support's unaudited financial statements showed that the company had assets of about \$50,000 and liabilities of about \$39,000. The statements showed revenue of about \$140,000, expenses of about \$133,000, and net earnings of about \$6,000.

[57] As of December 31, 2005, Repo.com BC's unaudited financial statements showed that the company had assets of about \$95,600, liabilities of about \$48,000, revenue of about \$155,000, expenses of about \$159,000, and a net operating loss of about \$5,000.

[58] Between 2001 and 2005, Dot Net Support's gambling websites generated approximately \$80,000 US in advertising revenue, being an average of about \$16,000 US per year.

[59] Dot Net Support received a letter dated June 28, 2006 from the solicitors for Asset Inc. stating that the trademark "repo.com" and the websites "repo.ca" and

“repo.com” were confusingly similar to Asset Inc.’s registered trademarks “REPO DEPO” in association with goods and services relating to the sale of used cars, boats, utility vehicles and the like, and to Asset Inc.’s other trade mark registrations which contain the prefix “repo”. The letter demanded that Mr. Boman cease using his trademark and websites. Mr. Boman does not agree, and continues to use the websites and seek registration of the trademarks.

[60] In 2006, Mr. Boman’s line 150 income was \$12,000 and Ms. Boman’s line 150 income was about \$20,000.

[61] In the period commencing around September 2006 and continuing into early 2007, Ms. Boman appeared as a television personality in the first season of the program “The Last 10 Pounds Boot Camp.” She received \$2,000 per episode.

[62] As of December 31, 2006, Dot Net Support’s unaudited financial statements showed that the company had assets of about \$92,000, liabilities of about \$16,500, revenue of about \$183,000, expenses of about \$119,000, and net earnings of about \$65,000.

[63] As of December 31, 2006, Repo.com BC’s unaudited financial statements showed that the company had assets of about \$129,000, liabilities of about \$52,000, revenue of about \$226,000, expenses of about \$197,000, and net earnings of about \$29,000.

[64] On January 3, 2007, Sold Com changed its name from Repo.com Inc. to Sold Com Inc. Sold Com has never received any revenue. Mr. Boman intended to use it to develop software for classified advertisements, but he has not pursued that.

[65] During the parties’ cohabitation, Mr. Boman paid virtually all the parties’ living and household expenses, including maintenance fees for the Nelson Street Apartment, rent when it was payable, utilities, and household expenses. The couple frequently ate outside the home, and Mr. Boman always paid the expenses when the couple was together. Ms. Boman occasionally used her own money to buy groceries, but she usually used Mr. Boman’s debit card. Ms. Boman paid for the

cable fees for six to eight months, but apart from that, essentially did not contribute to her living expenses. The couple never had a joint bank account. Ms. Boman paid for her own schooling.

[66] Ms. Boman testified that the couple's relationship centered on Mr. Boman's work. She testified that she and Mr. Boman constantly discussed the development of his businesses. She estimated that she devoted approximately ten hours a week to assisting Mr. Boman with his businesses. She accompanied Mr. Boman while he purchased items needed for work (such as cameras), assisted in networking with clients, accompanied Mr. Boman to California with a prospective client on one occasion, proof-read documents, assisted Mr. Boman in moving offices, and accepted packages delivered to the Active Companies. On one occasion, she sold a vehicle.

[67] Mr. Boman worked long hours, usually six days a week and into the evening. Ms. Boman testified that she helped Mr. Boman get his work done so that the couple could do things together.

[68] During their cohabitation, Ms. Boman primarily managed the couple's household by cleaning, doing laundry, and shopping for groceries. Ms. Boman also entertained her mother-in-law and assisted her after she had surgery when Mr. Boman was too busy to do so. Ms. Boman organized trips and entertainment for the couple, paying for most of this with her own money.

**(d) After Separation**

[69] As stated earlier, the parties separated in January 2007. Mr. Boman retained the shares in the Companies and a 2000 Yamaha motorcycle. Mr. Boman's personal account at Van City was overdrawn about \$24,000. Mr. Boman had about \$27,000 US on deposit with Van City. He transferred about \$2,000 of that to Ms. Boman following separation.

[70] After separation, Ms. Boman retained a guaranteed investment certificate for \$13,000, and about \$11,000 on deposit with various financial institutions. Ms. Boman left the relationship without any debts.

[71] Mr. Boman was sufficiently upset about the parties' separation that he focused his attention entirely on his work, devoting particularly long hours to it. He wanted to move out of the Nelson Street Apartment. He found buyers willing to pay \$470,000, but his mother refused to sell it. Over time, his mother relented, and agreed to sell it to him for that price. He intended to re-sell it to the buyers previously willing to pay \$470,000, but they declined to purchase it.

[72] On March 1, 2007, Ms. Boman entered into a contract to appear in 13 episodes of the second season of "The Last Ten Pounds Boot Camp". The contract provided that she would receive \$2,000 per episode.

[73] Mr. Boman agreed around mid-April 2007 to purchase the Burrard Street Apartment for \$1,180,000, with a completion date of August 31, 2007. The Burrard Street Apartment is a condominium unit in downtown Vancouver, B.C. Mr. Boman borrowed \$100,000 from Repo.com BC by taking a shareholder's loan. He used those funds for a deposit for the purchase of the Burrard Street Apartment.

[74] In April 2007, at Ms. Boman's request, Mr. Boman transferred the Firm Body website into Ms. Boman's name. He also provided her with file transfer protocol access to allow her to modify the website on an ongoing basis.

[75] On June 1, 2007, Ms. Boman entered into a contract to appear in 13 episodes of the first season of "Bulging Brides", another television program. The contract provided that she would receive \$2,500 per episode.

[76] In July 2007, Mr. Boman agreed to pay his mother \$470,000 for the Nelson Street Apartment. He borrowed \$206,000 from Repo.com BC for this purpose. These funds were obtained from earnings of the company after the couple separated.

[77] On July 16, 2007, Ms. Bouwman transferred her interest in the Nelson Street Apartment to her son. Mr. Boman paid his mother \$206,000 by cheque and executed a demand promissory note in her favour for the remaining \$264,000.

[78] On July 29, 2007, Mr. Boman entered into a contract to sell the Nelson Street Apartment, including furniture, for \$370,000, with a completion date of August 14, 2007.

[79] On July 30, 2007, Ms. Bouwman's solicitors returned \$5,000 of the purchase price to Mr. Boman. Ms. Bouwman had been concerned that her gain on the sale of the Nelson Street Apartment would make her ineligible for low-cost dental services, and result in her paying a greater amount for dental expenses. Her lawyers returned the \$5,000, stating that she had agreed not to charge Mr. Boman for losses she had expected to occur in relation to her dental expenses. As a result, Mr. Boman paid a total purchase price for the Nelson Street Apartment of \$465,000.

[80] Mr. Boman's sale of the Nelson Street Apartment completed on August 14, 2007. The sale price of \$370,000 was \$95,000 less than he had paid his mother for the property about one month earlier. Mr. Boman was forced to sell at a loss because he needed money to complete his purchase of the Burrard Street Apartment. Net of the real estate commission and adjustments, Mr. Boman received about \$358,000 from the sale of the Nelson Street Apartment.

[81] On August 15, 2007, Ms. Boman applied for an order without notice to Mr. Boman restraining Mr. Boman from transferring or disposing of any property which might be a family asset. Master Bolton made the requested order on that date. This order remained in effect for about two weeks.

[82] Mr. Boman testified that this order had a devastating effect on the operation of the Active Companies. He testified that he was unable to pay bills or run day-to-day operations. He testified that the order compromised the confidence of people working with him or intending to invest in his business, because it underlined the uncertainty of his ownership of the Active Companies. Mr. Wayne Naylor, president

of Accurate Bailiffs, testified that Mr. Boman did not come into work during the period the restraining order was in force, and that this had an impact on the business.

[83] On August 23, 2007, Mr. Boman completed the purchase of the Burrard Street Apartment for \$1,180,000. He had paid the \$100,000 deposit from the shareholder's loan, and he paid the balance of \$1,080,000 through the net proceeds of sale from the Nelson Street Apartment of roughly \$358,000, and a \$750,000 mortgage. That would result in \$28,000 more than the purchase price balance, most of which was applied to property transfer taxes of about \$22,000, and adjustments and legal fees.

[84] On August 28, 2007, by consent, this court ordered that the Order of Master Bolton dated August 15, 2007 be vacated in its entirety, and a new order was substituted. The new order provided that both parties were restrained from dealing with any property "which is held corporately or any asset of any company they have an interest in," or "which was held by a sole proprietorship they have an interest in, except in the ordinary course of business," and "neither party shall draw upon the shareholder loan accounts of any company they have an interest in," until either "the parties have arrived at a settlement of their matrimonial issues, a trial of their matrimonial issues, a court order relating to same, or unless they agree otherwise in writing." The consent order also provided that Mr. Boman could apply the proceeds of sale of the Nelson Street Apartment to the Burrard Street Apartment.

[85] In September 2007, Mr. Boman obtained possession of the Burrard Street Apartment. He discovered that the apartment had been used as a laboratory for the manufacturing of drugs, likely methamphetamines. He was not able to live there, and for the period of about September 2007 to March 2008, he usually slept at his office using a mat and a blanket. Mr. Boman spent a further \$100,000 to \$130,000 cleaning and repairing the apartment. He also spent \$70,000 to \$100,000 on furnishings and other renovations.

[86] In 2007, Mr. Boman's line 150 income was about \$32,000. Ms. Boman's line 150 income was about \$60,000.

[87] In 2007, Dot Net Support's taxable income was about \$50,000. As of December 31, 2007, Dot Net Support's unaudited financial statements showed that the company had assets of about \$157,000, liabilities of about \$49,000, revenue of about \$275,000, expenses of about \$232,000, and net earnings of about \$43,000.

[88] In 2007, Repo.com BC's taxable income was about \$207,000. As of December 31, 2007, Repo.com BC's unaudited financial statements showed that the company had assets of about \$17,000, liabilities of about \$45,000, revenue of about \$610,000, expenses of about \$407,000, and net earnings of about \$203,000.

[89] On March 1, 2008, Ms. Boman entered into a contract to appear in 13 episodes of the second season of "Bulging Brides", for \$2,500 per episode. On the same date, she entered into a contract to appear in 26 episodes of the third season of "The Last Ten Pounds Boot Camp", for \$2,000 per episode.

[90] On April 8, 2008, Mr. Boman received an unsolicited offer to purchase repo.com, apparently including both the domain name and website, for \$2,000.

[91] Mr. Boman moved into the Burrard Street Apartment around May 2008.

[92] On July 17, 2008, Ker J. ordered that the parties' trial set for July 16, 2008 be adjourned generally, and ordered Mr. Boman to make further disclosure.

[93] On November 13, 2008, Mr. Boman received another unsolicited offer, this time to purchase the repo.com domain name for \$1,000 USD.

[94] In 2008, Mr. Boman's line 150 income was about \$482,000. Most of this was about \$456,000 in the taxable amount of dividends from taxable Canadian corporations. The taxable amount is a grossed-up figure.

[95] In 2008, Dot Net Support's taxable income was \$80,425. As of December 31, 2008, Dot Net Support's unaudited financial statements showed that the company had assets of about \$250,000, liabilities of about \$91,000, revenue of about \$298,000, expenses of about \$227,000, taxes of about \$12,000, and net earnings of about \$59,000.



[96] In 2008, Repo.com BC's taxable income was \$195,740. As of December 31, 2008, Repo.com BC's unaudited financial statements showed that the company had assets of about \$145,000, liabilities of about \$107,000, revenue of about \$547,000, expenses of about \$357,000, taxes of about \$30,000 and net earnings of about \$161,000. In that year, it paid Mr. Boman \$365,000 in dividends.

[97] On February 1, 2009, Ms. Boman entered into a contract to appear in 13 episodes of the third season of "Bulging Brides", for \$3,500 per episode.

[98] On May 26, 2009, the assessed value of the Burrard Street Apartment was \$1,082,000, being about \$100,000 less than Mr. Boman had paid for it.

[99] On May 27, 2009, Mr. Boman received a letter from Accurate Bailiffs, informing him that, because of his "poor performance and lack of attendance" due to his "ongoing personal issue", Mr. Boman's share of the net profits would be reduced from 50% to 33%, effective from May 1, 2009. Mr. Naylor, Accurate Bailiff's president, testified at trial that he and its managing partner, Mr. Powers, had been required to devote more time to Accurate Bailiffs following the parties' separation, because Mr. Boman was not completing certain tasks. As a result, Accurate Bailiffs reduced Mr. Boman's share of net profits.

**(e) At Trial**

[100] Ms. Boman applied at the beginning of trial for an adjournment on the basis that she had not received full documentary disclosure from Mr. Boman. Mr. Boman opposed the adjournment, and argued that he had provided full disclosure. In July 2008, Ker J. had adjourned the trial and provided a comprehensive list of further documents that Mr. Boman was required to produce. Ms. Boman's application for an adjournment was dismissed.

[101] Ms. Boman consented to the dismissal of her claim for spousal support, and an order reflecting that was made on the first day of the trial.

[102] On the final day of trial, Ms. Boman again applied for adjournment of the balance of the trial on the basis of alleged incomplete disclosure by Mr. Boman. Again, Mr. Boman opposed an adjournment, and Ms. Boman's application was dismissed.

[103] At the time of trial, Mr. Boman was 40 years old and Ms. Boman was 32 years old. Mr. Boman owed about \$35,000 on his VanCity account overdraft, almost \$45,000 on his credit card, \$60,000 to Accurate Bailiffs in respect of an advance for legal fees, and about \$108,000 to Canada Revenue Agency for his 2008 income tax liability. In addition, he had a mortgage on the Burrard Street Apartment with about \$705,000 outstanding, and he owed \$264,000 on the demand promissory note to his mother. Mr. Boman's total indebtedness was about \$1,221,000, of which about \$972,000 related to his purchase of the Burrard Street Apartment. The balance in his Van City US dollar account was about \$1,200.

[104] At the time of trial, Mr. Boman was maintaining the rights to approximately 1,300 domain names at a cost of around \$10 per year for each domain name. Mr. Boman maintains 30 to 40 domain names which are similar to "repo.com" and "Easy Provider" to prevent opportunistic acquirers from directing traffic to competitor websites. He retains a further 50 to 60 domain names for potential future development as advertising, dating or gambling websites. He retains most of the remaining URLs because he is required to do so by the August 28, 2007 consent court order restraining him from disposing of assets. Mr. Boman testified that he has purchased no more than 15 new URLs since separation, and purchased all of them on behalf of Easy Provider. Mr. Boman does not expect to sell any of the URLs, but instead intends to allow the bulk of them to lapse.

[105] The primary business of Repo.com BC is advertising repossessed assets for sale on its website, repo.com, on which it earns commission. Repo.com BC's sole paying client is Accurate Bailiffs. The repo.com website is used by Accurate Bailiffs for several purposes: advertising to prospective customers, billing clients, scheduling staff, accounting, and relaying condition reports, evaluations and appraisals to

clients. Mr. Boman, through Repo.com BC, also acts as a sales manager and supervises several employees of Accurate Bailiffs.

[106] Dot Net Support manages and develops the repo.com website, providing software and technical updates and posting inventory for sale. Accurate Bailiffs pays Dot Net Support monthly management fees.

[107] The repo.com domain name is registered by Easy Provider. Easy Provider is the registrar, hosts the website, and provides technical support to the registrant, Mr. Boman. Mr. Boman pays Easy Provider \$10 per year to maintain the right to use the repo.com domain name and also pays for technical support and remote hosting.

[108] Mr. Boman continues to seek a registered trademark over "repo.com". Asset Inc.'s opposition to that trademark and its claim that Repo.com infringes Asset Inc.'s trademarks have not yet been resolved.

[109] Calgary Repo Sales is a limited partnership which advertises on the website "repo.com". Mr. Boman is not a shareholder of Calgary Repo Sales, or its general partner 1351930 Alberta Ltd, or its shareholder 1325215 Alberta Ltd. Calgary Repo Sales has not paid Repo.com BC any commissions for sales using the repo.com website. Mr. Boman hopes that Calgary Repo Sales will enter into a contract with Repo.com BC for use of the repo.com website.

[110] Mr. Lyon is Dot Net's software developer. He testified that, although he understood the software application side of the business, he had no knowledge of, or interest in acquiring knowledge of, the repossession side of the business. He testified that if Repo.com were for sale he would not buy it.

[111] As stated earlier, Mr. Naylor is Accurate Bailiff's president. He testified that the success of the repo.com website is attributable to the efforts of Mr. Boman. Mr. Naylor testified that, if Mr. Boman were unable to operate the repo.com website, Mr. Naylor would develop his own website rather than work with anyone other than Mr. Boman.

[112] Mr. Naylor testified that he would like to have Mr. Boman oversee the expansion into Toronto of Accurate Bailiffs and the repo.com website. He testified that Mr. Boman has been unable to devote his time and attention to this project because of the ongoing matrimonial litigation.

**Valuation**

[113] Ms. Boman did not call any expert evidence. Mr. Boman provided expert evidence on the value of both the Burrard Street Apartment and the Companies.

**a) Burrard Street Apartment**

[114] Mr. Doolan testified at the request of Mr. Boman as an expert in the field of residential appraisals. In his opinion, the market value of the Burrard Street Apartment as at May 11, 2009 was \$925,000. He considered that Mr. Boman's renovations have not increased the value of the apartment.

[115] Mr. Doolan's opinion was based on appropriate comparables and I accept it. Using the \$925,000 value, after deducting the sum of \$705,000 owing under his mortgage, Mr. Boman's net equity in the Burrard Street Apartment is about \$220,000.

[116] The \$264,000 demand promissory note note Mr. Boman gave to his mother is not registered against title. If it is considered to apply to the Burrard Street Apartment, Mr. Boman has negative equity.

**b) Companies**

**i) Evidence**

[117] Mr. Tidball testified at the request of Mr. Boman as an expert in the field of business valuation. He estimated that the fair market value of Mr. Boman's shares in the Active Companies as at April 2009 was about \$37,000, before considering the tax effect of distributing the Companies' assets.

[118] Mr. Tidball testified that he valued the Active Companies using a net asset approach, which in his opinion is appropriate for a business where the value resides chiefly in personal goodwill.

[119] Mr. Tidball valued the “repo.com” domain name at \$2,000. He testified that the remaining URLs have no fair market value at the present, because search engines like Google have become increasingly powerful, with the result that a website name is no longer required to locate a website quickly and efficiently, and there is little utility or value to a particular URL. Many URLs are available at either no cost or a fee of about \$10, and are subject to annual licensing fees of about \$10.

[120] The URLs owned by Repo.com BC do not generate any revenue at present. In Mr. Tidball’s opinion, some URLs have potential value, but only if packaged together with a business plan. Mr. Tidball attributed no value to the gambling sites because they have not generated revenue since 2005.

[121] Mr. Tidball testified that, although the revenue generated by the Active Companies in 2008 was approximately \$800,000, the Active Companies themselves have little stand-alone value. He testified that any goodwill in the Active Companies is not commercial goodwill, but personal goodwill relating to Mr. Boman and his unique expertise in both software applications and the repossession business. This goodwill has no market value, because it cannot be sold independently of Mr. Boman.

[122] The repo.com website is a tool for Mr. Boman to act as sales manager for Accurate Bailiffs. Other bailiff operations have their own websites, and would not be willing to acquire the repo.com website without Mr. Boman’s expertise. Mr. Tidball considered the fact that in 2002, Mr. Boman attempted, without success, to operate the website as a stand-alone site. In Mr. Tidball’s opinion, the fact that the Companies were involved in litigation to defend the “repo.com” trademark did not indicate that the Companies had value independently from Mr. Boman.

[123] Mr. Tidball stated in his report that distributive income taxes of approximately \$11,000 would arise on removal by Mr. Boman of the net cash from the Active Companies, reducing their value to approximately \$25,000.

[124] Mr. Tidball testified that it would be possible to transform personal goodwill into commercial goodwill if Mr. Boman trained a successor in the software and repossession business, but there was no prospective candidate at present.

[125] There was no expert evidence concerning the value of Sold Com or Time Foreclosure. However, they are inactive companies which have not generated any revenue.

**ii) Discussion**

[126] The Active Companies have little in the way of marketable assets. I accept Mr. Tidball's evidence that the URLs do not have any significant market value in the context of the present state of internet search engines.

[127] The primary asset of the Active Companies is Mr. Boman. Mr. Boman has long experience in both the repossession business and the use of computer databases to generate income. He has used that expertise extensively for Accurate Bailiffs, and has developed a close working relationship with its principals. Mr. Naylor's evidence is that if Mr. Boman were not involved in Repo.com BC, Active Bailiffs would take its business elsewhere. I accept Mr. Tidball's analysis that Repo.com BC would not have any significant value if Mr. Boman were no longer involved with it.

[128] Repo.com BC also has the asset of the "repo.com" website. The name "repo.com" appears to have little value, in light of the present strength of search engines. It must have taken some time and effort to develop the website itself, to include the features that enable its use by Accurate Bailiffs. Mr. Boman has no formal education in website development, but appears to have developed significant expertise. Mr. Lyon and Dot Net Support provided the services for the development of that website.

[129] I am not able to determine on the evidence how easy it would be for someone to develop a website like repo.com, and in particular, I am not able to determine how expensive it would be to include the necessary features. It is likely that there would be some inconvenience to Mr. Boman if he were unable to use the repo.com website and were forced to start afresh. As a result, he might pay something for Repo.com BC if he were not entitled to operate it.

[130] I considered whether the databases kept by Repo.com BC and Dot Net Support have value. Mr. Tidball did not attribute any value to these in his report. The evidence demonstrated that Mr. Boman reviewed information regarding previous sites visited by internet customers, and took other steps to update and maintain the databases of those customers. These databases appear to have some value for the business of Accurate Bailiffs, which is how they are presently used. However, Accurate Bailiffs is not interested in the website without Mr. Boman, and Mr. Boman was unable to derive value from his databases through a "stand-alone" website. As a result, I am unable to attribute any value to the databases as an asset of the Companies.

[131] I also considered whether the Companies had assets equal to the amount Mr. Boman owed them. Mr. Tidball did not attribute value to the receivables from Mr. Boman, presumably taking into account that Mr. Boman's present liabilities exceed his assets. I do not expect that a potential purchaser of the Companies would attribute value to Mr. Boman's indebtedness to the Companies, and therefore accept Mr. Tidball's analysis on that point.

[132] Ms. Boman suggested that the Companies have value because Mr. Boman uses them to pay personal expenses. The evidence showed that there is an annual accounting by the Active Companies regarding expenses they pay which are of personal benefit to Mr. Boman. Mr. Boman's ability to use the Companies to pay expenses which may benefit him in addition to the Companies is something of personal value to him. This is reflected in his estimate in his October 2, 2007 Financial Statement that he receives a personal benefit from the Active Companies

of about \$60,000 per year. However, this does not increase the fair market value of the Active Companies.

[133] As a result, the Active Companies have only modest value. The fact that they generated significant revenue, including about \$800,000 in 2008, arises from Mr. Boman's particular knowledge and abilities and the relationship he has developed with Accurate Bailiffs. However, both Mr. Boman and Accurate Bailiffs are free to leave Repo.com BC.

[134] Repo.com BC has been working to develop relationships with others, such as with Calgary Repo Sales. Repo.com BC has provided some services to Calgary Repo Sales, and may have built a sufficiently good relationship that it can obtain a contract for the payment of commissions. However, at the time of trial, Repo.com BC did not have a contract with Repo.com BC. It is likely that, like Accurate Bailiffs, Calgary Repo Sales is interested primarily because of Mr. Boman's involvement.

[135] Ms. Boman urged the court to find some value in the Active Companies. Her approach during the evidence was that there must be value in the Active Companies, because Mr. Boman had obtained significant funds from them. She also suggested that Mr. Boman must be hiding something in the way he had organized his business affairs.

[136] The evidence at trial did not show that Mr. Boman had hidden any assets or that any of the financial information he provided was incorrect. I accept Mr. Tidball's opinion that the real value in the Active Companies arises from Mr. Boman's work for it. In other words, the value is personal to Mr. Boman and not value in the Active Companies.

[137] As a result, I accept Mr. Tidball's estimate of the value of the Active Companies as at April 2009 at about \$37,000.

[138] Sold Com and Time Foreclosure are both inactive companies with no assets. For the purposes of this trial, they have no value.



**LEGAL ANALYSIS**

[139] The date for determining the character of assets as family or business assets is the date of the “triggering event” under the *FRA*: see *Newson v. Newson* (1986), 27 D.L.R. (4th) 738, 3 B.C.L.R. (2d) 1 at 8 (C.A.).

[140] There is no evidence that the court made a s. 57 declaration under the *FRA* or that the parties entered into a separation agreement. The date of the triggering event is therefore the date of the parties’ divorce, being January 29, 2009.

**a. The Companies**

[141] I will summarize the facts which relate to whether the Companies are family assets or excluded business assets, and in particular, whether Ms. Boman made a direct or indirect contribution to the Companies.

[142] Mr. Boman is the sole director, officer and shareholder of all four Companies.

[143] In 1989, when he was 19 years old, Mr. Boman began working for Accurate Bailiffs. He began developing software applications for them. He left that company about ten years later, in 1999, to develop other software applications.

[144] Mr. Boman started cohabiting with Ms. Boman in May 2000. At that time, Mr. Boman was self-employed, developing software interfaces for dating and gambling software and working on a software application for collection agencies. Ms. Boman was a student.

[145] Mr. Boman incorporated Repo.com BC and Dot Net Support in 2002 and 2003. The Active Companies both lost money in 2003. For most of 2004, Mr. Boman worked as sales manager for one of Accurate Bailiffs’ competitors. In 2004, Repo.com BC lost money, but Dot Net Support reported net income of about \$35,000.

[146] From about April 2005 to October 2005, Ms. Boman, together with Mr. Lyon, Dot Net Support’s software developer, and Mr. Boman, conducted advertising

campaigns. The campaigns generated revenue of approximately \$10,000, which was split equally among the three of them.

[147] In May 2005, Mr. Boman returned to work for Accurate Bailiffs as sales manager. In 2005, the Active Companies had combined revenue of about \$295,000. In terms of net income, Repo.com BC lost money, although Dot Net support earned net income of about \$7,300.

[148] In 2006, the Active Companies had combined revenue of approximately \$409,000. Dot Net Support's net income was about \$65,000, and Repo.com BC's income was about \$29,000, for a total net income of about \$94,000.

[149] As set out above, Ms. Boman had little direct involvement in the business of the Active Companies. On a few occasions, she uploaded ads onto the website, took messages and paid bills. Occasionally, she also assisted by approving couples for the swingers website, thinking of domain names, and promoting the "repo.com" brand by handing out items at nightclubs. At times, Ms. Boman would bring lunch to Mr. Boman while he was at Accurate Bailiffs' office and move cars which were on the lot. She proof-read documents, assisted Mr. Boman in moving offices, and accepted packages delivered to the Companies. On one occasion, she sold a vehicle.

[150] Ms. Boman and Mr. Boman frequently discussed the development of their respective businesses. Ms. Boman devoted about ten hours a week doing things which related to Mr. Boman's businesses. That included the time she accompanied Mr. Boman while he purchased items for work, networked with clients, and travelled to California with a prospective client on one occasion.

[151] During their cohabitation, Ms. Boman primarily managed the couple's household by cleaning, doing laundry, and shopping for groceries. She also entertained her mother-in-law and assisted her after she had surgery when Mr. Boman was too busy to do so. Ms. Boman organized trips and entertainment for the couple, paying for most of this with her own money.

[152] During their cohabitation, Ms. Boman obtained her Bachelor's degree in Business Administration from Simon Fraser University. Ms. Boman was in the "co-op" program, working full-time every other term and part-time during school terms. Ms. Boman also obtained various fitness training certifications and eventually started her own fitness-related business in June 2005.

[153] Ms. Boman's taxable income was greater than Mr. Boman's in the years 2003 through 2007. The earnings of the Active Companies became significant starting in 2006.

[154] The parties separated in January 2007.

[155] In 2007, the Active Companies had combined revenue of approximately \$880,000. Repo.com BC's taxable income was about \$207,000, and Dot Net Support's was almost \$50,000, for a combined net income of about \$250,000.

[156] In 2008, the Active Companies had combined revenue of approximately \$845,000 and net income of approximately \$220,000. In that year, Repo.com BC paid Mr. Boman \$365,000 in dividends.

**(i) Legislation**

[157] Section 56(1) of the *FRA*, states that each spouse's interest in a family asset arises on the date of the triggering event:

56 (1) Subject to this Part and Part 6, each spouse is entitled to an interest in each family asset on or after March 31, 1979 when

- (a) a separation agreement,
- (b) a declaratory judgment under section 57,
- (c) an order for dissolution of marriage or judicial separation, or
- (d) an order declaring the marriage null and void

respecting the marriage is first made.

[158] Section 58 defines "family asset" for the purposes of the *FRA*:

58 (1) Subject to section 59, 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 subsection (2), the definition of family asset includes the following:

(a) if 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;

...

(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.

[159] Section 59 provides that certain business assets are excluded:

59 (1) If property is owned by one spouse to the exclusion of the other and is used primarily for business purposes and if the spouse who does not own the property made no direct or indirect contribution to the acquisition of the property by the other spouse or to the operation of the business, the property is not a family asset.

(2) In section 58 (3) (e) or subsection (1) of this section, an indirect contribution includes savings through effective management of household or child rearing responsibilities by the spouse who holds no interest in the property.

[160] Section 60 provides that the onus is on the spouse opposing a claim under s. 56 (in this case, Mr. Boman) to prove that the property in question is not ordinarily used for a family purpose.

**(ii) Issue**

[161] For an asset to be an excluded business asset under s. 59:

(a) The asset must be used primarily for business purposes, and

- (b) The non-owning spouse must have made no direct or indirect contribution to the acquisition of the asset or to the operation of the business.

[162] It is clear that the Active Companies are used primarily for business purposes and that the Inactive Companies were intended to be used primarily for business purposes. Ms. Boman made no direct or indirect contribution to the Inactive Companies, and they have never operated. As a result, the issue regarding the Companies is whether Mr. Boman has established that Ms. Boman made no direct or indirect contribution to the acquisition or operation of the Active Companies.

**a. Case law regarding Business Assets**

[163] Direct contribution includes working in the business, whether paid or unpaid: *Flewin v. Flewin*, [1996] B.C.J. No. 484 (S.C.) at para. 40, appeal dismissed [1997] B.C.J. No. 2519.

[164] Direct contribution also includes contribution to the acquisition or maintenance of the asset (*Enz v. Enz*, [1996] B.C.J. No. 1786 (S.C.)), or assuming risks by, for example, guaranteeing a loan (*Campbell v. Campbell* (1990), 26 R.F.L. (3d) 354 (B.C.C.A.), *Detta v. Detta*, 2001 BCSC 1222, varied 2002 BCSC 417).

[165] Minor direct contributions will be insufficient to render the business a family asset: *Sangster v. Sangster* (1984), 55 B.C.L.R. 251, 40 R.F.L. (2d) 31 (C.A.). In *Sangster* the parties married in 1977. They did not have children. The wife had worked in the husband's business from 1969 to 1972 and had been paid for her work. The husband sold the business in 1972 but continued to use the company to hold investments. Esson J.A. found that the wife's contribution was a "very minor one", and stated that he was not persuaded that the business was thereby converted into a family asset. He went on to note that even if the business were a family asset, the wife would not have been entitled to any interest in it.

[166] The leading case on indirect contributions is *Elsom v. Elsom* (1983), 3 D.L.R. (4th) 500, 49 B.C.L.R. 297 (C.A.), leave to appeal dismissed (1984), 50 B.C.L.R.

xxxix (S.C.C.). The Court of Appeal in *Elsom* held that indirect contribution can be inferred if the spouse has participated in household management and child-rearing. Savings to the business-owning spouse can be inferred because he or she has not had to arrange and pay for someone else to provide the services. The savings are assumed to have advanced the business because more time and money is available to devote to the business. However, the presumption may be rebutted if there is no connection between the contributions of the non-owning spouse and the business: see *Elsom*, at 299-300 (B.C.L.R.).

[167] Indirect contributions can include contributions other than household management and child-rearing. In *Piercy v. Piercy* (1991), 31 R.F.L. (3d) 187 (B.C.S.C.), the husband owned considerable business assets, nearly all of which he had brought into the marriage, but which had increased substantially in value during the marriage. The parties cohabited one year and were married 6 years. They had no children. Huddart J. (as she then was) awarded the wife a 15% interest.

[168] Ms. Piercy quit her job shortly after the relationship began. Huddart J., at paras. 25 and 26, listed the wife's contributions as follows:

[25] Ms. Piercy cared for the Seaview home and the Shawnigan residence and the dogs, albeit with the assistance of a gardener and a cleaning lady, and albeit that, had she wanted more help, I am sure Mr. Piercy would not have objected. She prepared some meals. She entertained occasionally. She helped him care for his mother and aunts. She developed a good relationship with his children. She travelled with him, particularly in the early years of their marriage. She ate dinners out with him. She occasionally joined him at social events to which he was invited. She was the companion for whom Mr. Piercy was searching when he met her. I do not accept that any suggestions Ms. Piercy may have made concerning the hotels or his other businesses assisted him in any way. I think they may have been counter-productive given their personalities. However, she was his confidante and sounding board, one I find he valued.

[26] Do these actions constitute indirect contributions within the meaning of ss. 45 and 46 [now ss. 58 and 59] of the *Family Relations Act*? I think they do.

[169] *Piercy* was endorsed by the Supreme Court of Canada in *Hartshorne v. Hartshorne*, 2004 SCC 22, [2004] 1 S.C.R. 550, at para. 97. *Piercy* was also

followed in *O'Bryan v. O'Bryan*, [1996] B.C.J. No. 1125 (aff'd. (1997), 97 B.C.A.C. 62, 43 B.C.L.R. (3d) 296) and *O'Keefe v. O'Keefe*, 2002 BCSC 337.

[170] In *O'Bryan*, the husband owned a restaurant business. The wife bought and arranged flowers for the restaurant twice a week for approximately five years. Both parties agreed that the wife should concentrate on the family and not work outside the home. The wife was primarily responsible for the household and for her four daughters, and occasionally looked after one of her husband's sons. Dillon J. found that the plaintiff had made both a direct and an indirect contribution to the restaurant business, providing at para. 18:

The plaintiff's involvement in the floral arrangements for the restaurant were not profitable in themselves but added to the identity of the restaurant while greatly pleasing the defendant. The plaintiff's primary responsibility of homemaking, entertaining, childcare and companionship was the spousal role desired by the defendant and agreed by the plaintiff. In these circumstances, the business is a family asset (see *Piercy v. Piercy* (1991), 31 R.F.L. (3d) 187 at 194-6).

[171] The wife was awarded a 20% interest in the business.

[172] In *O'Keefe*, the husband had two companies which manufactured cleaning fluids. The wife claimed the businesses were family assets. In addition to all of the household management, she contributed directly to the businesses by filling bottles and labeling them and answering telephones occasionally. She also accompanied her husband to trade shows and substituted for her husband at the display booth during his breaks. Apart from that, she did not work outside the home during the relationship. Clancy J. found that her contributions were for the benefit of the companies, that they were thus a family asset, and that the wife was entitled to a 10% interest in them.

[173] In *McDonnell v. McDonnell*, [1997] B.C.J. No. 2980 (S.C.), the wife's contributions to a restaurant in which her husband owned shares included, over a 16-month period, an occasional errand, waitressing for two hours on one occasion and twice helping to take down decorations. Despite that and her "supply of

domestic services” which was not detailed in the reasons, Hunter J. held that her contribution was insufficient to transform the husband’s shares into family assets.

[174] In *Simpkins v. Simpkins* (1982), 41 B.C.L.R. 75, 32 R.F.L. (2d) 1 (C.A.), the marriage lasted 13 years, during which the wife looked after the children and home. Except for a few brief periods, the wife did not work outside the home. In the last seven months of the relationship, the husband purchased his own business with money inherited from his father. The wife was appointed director of the company and discussed some of the problems of the new business with her husband. She also did some minor secretarial work for which she received payment. The trial judge considered the wife’s contribution throughout the whole of the marriage and awarded the wife a 20% interest.

[175] On appeal, the court held that the wife had made no direct or indirect contribution to the acquisition of the company or to its operation. Taggart J.A., delivering the judgment of the court, wrote at para. 36:

[36] The judge referred to the skill, experience and contacts gained by the husband while employed by [the husband’s former company]. He said those attributes were essential to the operation of the new business. The judge’s opinion seems to have been that the wife’s indirect contribution to savings by way of effective management of household and child rearing responsibilities contributed to the acquisition of those attributes by the husband. No doubt the effective management by the wife of household and child rearing responsibilities would be of assistance to the husband. But it is not the discharge of those responsibilities in the abstract of which s. 46(1) [now s. 59] speaks. It must be shown that there were savings generated by the discharge of those responsibilities. In this case, I cannot relate the savings, if any, generated by the wife discharging the responsibilities named in s. 46(1) to the acquisition by the husband of the experience, skills and contracts he acquired while working for [the husband’s former company]. On the contrary, I think those attributes are much more likely to have come from those with whom the husband worked while employed by [the husband’s former company].

[176] The Court of Appeal noted in *Elsom* that, although savings from effective household management are normally to be presumed, there will be cases where the presumption is rebutted. *Simpkins* was one such case, in part because the husband acquired the company only seven months before the relationship terminated.



[177] In *Garrett v. Garrett*, 2000 BCSC 444, the parties were married 22 years. The husband had an interest in a ranch property on which he was employed. The wife did most of the household management and looked after the couple's three children. She was also involved in the operation of the feed lot, which was a separate business from the ranch business, but, as the trial judge found, the two businesses operated interdependently. The husband worked up to 70 hours a week on the ranch, and the trial judge found that the wife, through her household management and child care as well as ranch-related work, provided her husband with the opportunity to perform this amount of work. In addition, the trial judge noted that *Simpkins* stands for the proposition that the longer the marriage, the more appropriate it is to find an indirect contribution: at para. 67. The wife was found to be entitled to the statutory presumption share of 50%.

**(iii) Discussion**

[178] The case law establishes that very minor contributions to a business will be insufficient to transform it into a family asset. The court must consider the value, nature and magnitude of any contribution in the context of the effect on the business and determine whether it surpasses the *de minimus* threshold.

[179] Before the parties met, Mr. Boman worked for Accurate Bailiffs for ten years in the period 1989 through 1999. Mr. Boman began developing the concept of software applications for the repossession business in 1995, five years before the parties' relationship began. Mr. Boman was self-employed when the parties met.

[180] Ms. Boman did not make any direct contribution to the acquisition of the Companies or of their assets, such as the domain name "repo.com". She did not contribute financially to the maintenance of the business assets, such as by paying the fees for the domain names. Neither did she assume any of the financial risks of the business.

[181] Ms. Boman suggested that she made a direct contribution to the operation of the Companies. From about April to October 2005 she assisted Mr. Boman and

Mr. Lyon in conducting advertising campaigns. These campaigns earned \$10,000 which was split equally among the three of them. The fact that a spouse is paid for the work does not prevent that work from being a contribution for the purposes of characterizing the assets. Ms. Boman's work in the advertising campaigns was a material direct contribution to Dot Net Support, although that company is not presently pursuing that advertising business.

[182] Ms. Boman assisted Mr. Boman occasionally in promoting the business of Repo.com BC, by uploading ads, paying bills and performing other small tasks. However, throughout the period that the parties lived together, before and during marriage, Ms. Boman was developing her own career, through university study and other steps.

[183] Of all the cases discussed above, Ms. Boman's contributions to the business are most similar to those in *Piercy*. As did the wife in *Piercy*, Ms. Boman acted to some extent as a "confidante and sounding board" to Mr. Boman in discussion of his business plans. Mr. Boman is a highly entrepreneurial individual who enjoys discussing business opportunities. Ms. Boman often listened to Mr. Boman discussing his ideas, and also discussed her ideas for both his business and hers. Ms. Boman also went with Mr. Boman on shopping trips to buy minor items for his business like cameras, and once on a trip to California with a prospective client. The court in *Piercy*, and the Supreme Court of Canada in approving that case, have essentially held that such contributions are enough to satisfy the minimum requirement under the *FRA* for a business to be declared a family asset.

[184] Ms. Boman also suggested that she made an indirect contribution to the Active Companies by effective household management. She did laundry, cleaning and grocery shopping, although the couple frequently ate outside the home.

[185] Savings as a result of effective household management are normally to be presumed. In this case, it appears that the household chores were relatively minor. The couple had no children, and ate out frequently. The cases that involve raising

children cannot be easily compared to those that do not, because of the very significant amount of time and energy involved in raising children.

[186] Ms. Boman's household responsibilities were not as onerous as in most of the cases discussed above. The Bomans' marriage of approximately two years was brief. Throughout the parties' cohabitation before and after marriage, Ms. Boman was either in school full time or working full time. She obtained numerous fitness certifications and also started her own business. She had relatively little time of her own to devote to household management.

[187] The attributes Mr. Boman developed which benefitted the Active Companies are his expertise in the repossession business and software, the confidence of the principals of Accurate Bailiff, and his entrepreneurial approach. Any savings in time arising from Ms. Boman's performance of household duties resulted in only a modest indirect contribution to the Active Companies. The fact that the high income-earning years of both Active Companies followed the parties' separation is consistent with that.

[188] Although Ms. Boman made no contribution to the acquisition of the Active Companies, and the direct and indirect contributions that she made to their growth and operation were relatively small, in the context of the business of the Active Companies and the time Ms. Boman devoted to her own endeavours, I find that Ms. Boman has established that she made enough of a contribution to satisfy the threshold requirement under the statute and case law. Thus, the Active Companies are family assets for the purposes of the *FRA*.

[189] Having determined that the Active Companies are family assets, I must consider whether an equal division of the Active Companies would be unfair. Section 65(1) of the *FRA* is as follows:

65 (1) If the provisions for division of property between spouses under section 56, Part 6 or their marriage agreement, as the case may be, would be unfair having regard to

(a) the duration of the marriage,

- (b) the duration of the period during which the spouses have lived separate and apart,
- (c) the date when property was acquired or disposed of,
- (d) the extent to which property was acquired by one spouse through inheritance or gift,
- (e) the needs of each spouse to become or remain economically independent and self sufficient, or
- (f) any other circumstances relating to the acquisition, preservation, maintenance, improvement or use of property or the capacity or liabilities of a spouse,

the Supreme Court, on application, may order that the property covered by section 56, Part 6 or the marriage agreement, as the case may be, be divided into shares fixed by the court.

[190] In this case, the most important factors are the following:

- (a) Mr. Boman invested more money in the Companies than they are presently worth, including his investment of \$55,000 in 2001 to buy the “repo.com” domain name;
- (b) Mr. Boman brought into the relationship the qualities which enabled him to profit through the Active Companies (his software, sales, and repossession business expertise and his business contacts);
- (c) Ms. Boman did not assume any of the risks of the Active Companies;
- (d) the contributions Ms. Boman made to the Active Companies were modest, as discussed above;
- (e) both parties are able to be self-sufficient;
- (f) the Active Companies were incorporated about one year before the parties married; and
- (g) the short period of marital cohabitation, being about two years.

[191] In light of these factors, an equal division of the Companies would be unfair. They shall be reapportioned pursuant to s. 65(1) of the *FRA*, to provide that Ms. Boman is entitled to a nil share of them, as was suggested in *Sangster, supra*.

**b. Nelson and Burrard Street Apartments**

[192] I will summarize the facts relating to whether the Nelson Street Apartment was property owned by Mr. Boman at the relevant time.

[193] Mr. Boman owned the Delta home when the parties began cohabiting in May 2000. On September 5, 2000, Mr. Boman entered into a contract for the purchase of the Nelson Street Apartment for \$138,000, and paid a deposit which was later increased to \$16,000.

[194] On December 21, 2000, Mr. Boman sold his Delta house for \$294,000. The net sale proceeds after paying the mortgage were about \$50,000. He devoted the net sale proceeds to the deposit on the Nelson Street Apartment and to his businesses.

[195] On April 27, 2001, the date scheduled for the closing of his purchase of the Nelson Street Apartment, Mr. Boman assigned his right to purchase it to his mother. She completed the purchase by paying the \$122,000 balance of the \$138,000 purchase price, and the property was registered solely in her name.

[196] Mr. Boman agreed to pay his mother rent and did so for about two years, paying a total of about \$26,000. Mr. Boman expected that his mother would leave the property to him in her will if he fully repaid her. However, he did not have a legal right of ownership of the Nelson Street Apartment, and he did not fully repay his mother for the purchase price.

[197] Mr. Boman and Ms. Boman lived in the Nelson Street Apartment for the period of about five and one-half years from about April 2001 until their separation in January 2007.

[198] In July 2007, six months after the parties separated, Mr. Boman agreed to pay his mother \$470,000 for the Nelson Street Apartment. He borrowed \$206,000 from Repo.com BC for this purpose. These funds were obtained from earnings of the company made after the couple separated.

[199] On July 12, 2007, Ms. Bouwman transferred her interest in the Nelson Street Apartment to Mr. Boman. Mr. Boman paid his mother \$206,000 by cheque and executed a demand promissory note in favour of his mother for the remaining \$264,000.

[200] After taking into account the return of \$5,000 to Mr. Boman, he paid a total effective purchase price for the Nelson Street Apartment of \$465,000.

[201] On August 14, 2007, Mr. Boman sold the Nelson Street Apartment for \$370,000, being a loss of \$95,000 from what he paid his mother one month earlier.

[202] On August 23, 2007, Mr. Boman purchased the Burrard Street Apartment for \$1,180,000. He financed the purchase with the \$100,000 deposit obtained by shareholder's loan, the net proceeds of sale from the Nelson Street Apartment of about \$358,000, and a \$750,000 mortgage.

#### **i) Legislation and Case Law**

[203] Section 58 of the *FRA* provides that a family asset is "property owned by one or both spouses".

[204] Property acquired by one spouse after separation will be a family asset if it was acquired, in whole or in part, by the use of family assets or the proceeds of family assets.

[205] In the leading case supporting this principle, *Billingsley v. Billingsley* (1991), 83 D.L.R. (4th) 673, 58 B.C.L.R. (2d) 329 (C.A.), the husband purchased a house after the parties separated. A portion of the purchase was funded by a term deposit the husband had held throughout the marriage but kept hidden from his wife. The trial judge had rejected the claim by the wife that the house was a family asset. The

Court of Appeal concluded that it was a family asset. However, the Court of Appeal held that the wife was not entitled to any share in the house under s. 51 [now s. 65], because the house was not acquired for a purpose involving a family of which the wife was a member; the wife never used the house; the husband was the only person who preserved, maintained and used the property; and the wife's share of the funds used to purchase the asset represented less than 2% of the purchase price of the house.

[206] *Billingsley* was most recently referred to in *Foster v. Foster*, 2007 BCCA 83 and *Akkor v. Rolston*, 2009 BCSC 258.

**ii) Discussion**

[207] Ms. Bouwman was the sole owner of the Nelson Street Apartment throughout the period that the parties lived there, both before and during marriage. However, the date at which the assets are characterized is the date of the triggering event of January 29, 2009.

[208] Mr. Boman became the owner of the Nelson Street Apartment on July 12, 2007, after the parties' separation, when his mother transferred her interest to him for \$465,000. On January 29, 2009, the date of the triggering event, Mr. Boman owned the Burrard Street Apartment, and not the Nelson Street Apartment.

[209] Although the parties lived together in the Nelson Street Apartment, Mr. Boman did not own an interest in it when they did so. As a result, it was not "property owned by one ... spouse and ordinarily used by a spouse ... for a family purpose" and is not a family asset.

[210] Property acquired by a spouse after separation is generally a family asset if it was acquired by the use of family assets or the proceeds of family assets: see *Billingsley, supra*.

[211] In this case, Mr. Boman financed the post-separation purchase of the Nelson Street Apartment in part with \$201,000 (being \$206,000 less Ms. Boman's refund of

\$5,000) he borrowed from Repo.com BC, which the company earned after the couple separated. Mr. Boman continues to owe his mother \$264,000 under the demand promissory note.

[212] Because the Active Companies are family assets, the funds Mr. Boman borrowed from Repo.com BC are also family assets.

[213] The Burrard Street Apartment was purchased with proceeds of the Nelson Street Apartment, which is not a family asset, and borrowing from one of the Active Companies, which is a family asset. As a result, the Burrard Street Apartment is a family asset.

[214] However, if the Burrard Street Apartment has any equity, it arose primarily from the funds Mr. Boman borrowed from Repo.com BC, which the company earned after the couple separated. In light of that, and the other factors discussed above relating to the Active Companies, an equal division of that equity would be unfair. It shall be reapportioned pursuant to s. 65(1) of the *FRA* so that Ms. Boman is not entitled to any share in the Burrard Street Apartment.

**c. Other assets**

[215] Mr. Boman has retained the 2000 Yamaha motorcycle. He estimated its value at about \$5,000 on separation, and presently, at about \$2,000. On separation, he also retained bank accounts worth about \$30,000 US, which are presently worth about \$2,500 US. He has remained responsible for the overdraft to Van City, which was about \$24,000 on separation and at trial was about \$35,000. The overdraft was apparently incurred for family expenses. Mr. Boman is also responsible for the \$47,000 owing on his credit card and line of credit, apparently for debts incurred since separation. He has other debts relating to his post-separation income tax and legal fees.

[216] In summary, Mr. Boman retained assets and assumed debts which on separation resulted in his retaining the net amount of about \$10,000.



[217] Ms. Boman retained the guaranteed investment certificate of about \$13,000, and about \$13,000 on deposit or from Mr. Boman's US bank account. Ms. Boman did not assume any debt when the parties separated.

[218] In summary, Ms. Boman retained assets which on separation were in the net amount of about \$23,000. While the guaranteed investment certificate may not have been a family asset, the other \$13,000 on deposit likely was a family asset, because the account was apparently used for some family purposes.

[219] The division of these assets was roughly equal. As a result, each party shall retain the assets in his or her current possession, and shall remain solely responsible for his or her debts.

**SUMMARY**

[220] In summary, the order is as follows:

- (a) This court declares that, as between the parties, Mr. Boman is entitled to the entire interest in the Companies and the Burrard Street Apartment;
- (b) Each party shall retain the assets in his or her current possession, and shall remain solely responsible for his or her debts;
- (c) The certificate of pending litigation filed by Ms. Boman against Mr. Boman's interest in the Burrard Street Apartment is cancelled; and
- (d) This court declares that the terms of the consent order of August 28, 2007 restraining certain dispositions of assets are no longer in effect.

[221] Counsel for Mr. Boman sought the opportunity to address the issue of costs following the release of these reasons for judgment. If the parties are not able to agree on the issue of costs, they may schedule a hearing before me through the registry.

“The Honourable Madam Justice Gray”