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"Champagne Wishes and Caviar Dreams"

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Case Commented On: *Hood v Skauge*, 2015 ABQB 476 (CanLII)

Those who are old enough to remember — and who liked — the 1984-1995 TV show, "Lifestyles of the Rich and Famous", which featured the extravagant lifestyles of wealthy entertainers, athletes and business moguls, might be thrilled to know that NBC is reviving the series. They might also be delighted to read the 97-paragraph Parts V and VI in this decision by Justice Craig M. Jones interpreting a Cohabitation Agreement entered into by Cheryl Hood and Richard Skauge (see "Q&A w/ Olympia Trust Founder Rick Skauge", *Exempt Edge*). The TV show was said to give special attention "to the prices paid for the various luxuries with which the rich enhanced their daily lives, ranging from spacious seaside villas, to classic cars, to gold-plated bathroom fixtures" (plot summary here). Justice Jones engages in an account of the lifestyle led by Ms. Hood and Mr. Skauge for a little over four years, between December 2004 and May 2009 — a lifestyle that included a yacht, three homes in Calgary, Mercedes automobiles, a cabin near Penticton, trips to Italy, Paris, New York, Thailand, St. Thomas, Disneyland, Fiji, and Hawaii (as well as Vancouver, Banff, Toronto, Quebec City and North Battleford), a $100,000 ring and various sexual relationships outside the relationship that is scrutinized in this case.

Those who have no time or taste for sensationalism might be interested in this case for the approach it takes to determining the date of separation and whether a ring is or is not an engagement ring and thus returnable when marriage does not follow. The decision also provides a lesson or two about how not to draft a cohabitation agreement if cohabitants want to keep their relationship out of the courts and thus the public eye.

The parties agreed "Cohabitation Agreement", effective May 28, 2007, included Clause 9 setting out when the parties would be deemed to have separated. It provided:

> 9. The parties acknowledge that they will be deemed to have separated in the following circumstances:
> (a) a continuous period of separation exceeding thirty (30) days, where either party does not intend to return to live with the other party;
> (b) the written notice by either of the parties to end their relationship; or
> (c) either party commencing any type of legal proceeding against the other party for divorce, alimony, support or a division of property.

Mr. Skauge commenced an action on September 1, 2009, so that would be the date of separation under clause 9(c). Clause 9(b) was irrelevant. However, Mr. Skauge argued that separation occurred in May 2007 under the terms of clause 9(a). Thus, the date of the parties' separation became the major issue, taking up 97 of the 182 paragraph decision — despite the deeming provisions of clause 9.

Justice Jones characterized Clause 9(a) as "problematic" because it used the word "separation" to describe one of the circumstances in which separation was deemed to occur (at para 12). As he elaborated, this definition was not helpful, not simply because it was circular, but also because "it offers limited insight into what the parties may have thought a state of 'non-separation' involved (at para 23). For more plebian couples, ceasing to live together means they have separated (at para 27). However, Clause 9(a) did not require that this couple actually live together. Justice Jones held that, because of their unique lifestyle, the parties could be living separate and apart but not be deemed to have separated if they possessed the intention to start living together in the future (at para 28).

Justice Jones considered holding the agreement void for uncertainty because of clause 9(a) but concluded that doing so would not serve the interests of either party (not to mention the interests of the lawyers drafting the agreement) (at para 24).

Justice Jones considered relying on clause 9(c) and going with a separation date of September 1, 2009 (at para 25). However, he decided that relying on clause 9(c), while straightforward, did not allow "a more nuanced examination of the parties' relationship" (at para 26) which he determined was necessary in order to apply clause 9(a) and give effect to the parties' agreement. Of his approach, he had the following to say:

> In my view, the best way to determine the date of separation in the context of the unique relationship between these parties is to examine the nature of that relationship, to consider how it evolved and, in that way, to determine the point at which the nature of the relationship fundamentally changed such that the parties could be said to have "separated" in the sense of abandoning the relationship with no intention of resuming it. This analytical approach permits the Court to avoid attaching moral significance to the parties' actions. It simply looks at what the parties had and how what they had evolved over time (at para 30).

A nuanced examination of the relationship by Justice Jones translates into a lengthy description of the parties' lifestyle, necessary because their physical living arrangements were not determinative of when they separated. They apparently "broke up" as many as ten times (at para 113), helping Justice Jones to decide that "the parties' relationship was characterized not by physical cohabitation, but by sexual intimacy and an opulent lifestyle" (at para 123). Justice Jones therefore concluded that the relationship fundamentally changed in May 2009 when the parties were sexually intimate for the last time and when Mr. Skauge reduced his financial support of Ms. Hood (at para 125).

Once the date of separation was decided, the application of the rest of the agreement became primarily an accounting exercise. The one exception was a ring that Ms. Hood received from Mr. Skauge worth approximately $100,000. It was not dealt governed by the terms of the agreement, but rather by the common law and statutory law governing gifts in general and engagement gifts in particular.

Mr. Skauge had sued for the return of what he characterized as an "engagement ring". Ms. Hood disputed this characterization. Apparently the ring was purchased while the parties were in St.

Thomas in March 2008 and Ms. Hood testified that Mr. Skauge suggested buying it to "show my boys that you're staying in the family."

Justice Jones noted that Mr. Skauge had testified that the parties became engaged on four separate occasions, none of which resulted in marriage (at para 171). From this testimony, he concluded that the ring could not be said to have been given to Ms. Hood on the condition that the parties were to be married.

Justice Jones then considered whether the ring was given in contemplation of marriage. Mr. Skauge had also testified that when he gave Ms. Hood the ring, it was not coupled with a promise to marry her, but that prior to a hockey game in April 2008 during which Ms Hood was wearing the ring on her engagement ring finger, he and Ms. Hood had discussed marriage and he had formulated the intention to marry her.

Justice Jones relies upon the examination of the law with respect to engagement rings set out in *Lummer v Frohlich*, 2007 ABQB 295 (CanLII), 77 Alta LR (4th) 72 at paras 100-101 and *McManus v McCarthy*, 2007 ABQB 783 (CanLII), 431 AR 389, and upon section 102 of the *Family Law Act*, SA 2003, c F-4.5 which makes the question of the fault of the donor of the gift with respect to the marriage not occurring irrelevant.

In the end, who got the ring depended on whether the gift was absolute on delivery or conditional. In deciding that the gift of the engagement ring was not conditional, Justice Jones indicated that he did not believe that Mr. Skauge ever seriously contemplated marrying Ms. Hood. Instead, he found the ring to be simply "another of the gifts made by Mr. Skauge to Ms. Hood over the course of the relationship" and it did not carry with it any particular condition (at para 175).

"Champagne wishes and caviar dreams" seems an apt description of a characterization of a $100,000 ring as simply another one of the gifts made over the course of the now-ended relationship. It was the signature catch phrase used by Robin Leach, the original host of Lifestyles of the Rich and Famous, to end each episode.