IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *Dryden* v. *Dupuis*, 2004 YKSC 67

Date: 20040918
Docket No.: S.C. No. 95 – A0340
Registry: Whitehorse

Between:

DALE WAYNE DRYDEN

Plaintiff

And

ANDRE PHILIP DUPUIS

Defendant

Before: Mr. Justice L.F. Gower

Appearances:
R. Grant Macdonald, Q.C. — For the Plaintiff
Andre P. Dupuis — Appearing on his own behalf

REASONS FOR JUDGMENT

INTRODUCTION

[1] This is a sad story of the break-up of two good friends who attempted to establish a survey business in the Yukon. It was their first foray from government employment into the private sector and, while things started well enough, they soon became unmanageable.

[2] The parties signed a written partnership agreement (the “agreement”), obtained financing and purchased the necessary equipment to begin operations. They moved to the Yukon from Ontario, rented office premises and opened for business. They secured

contracts and began to generate revenue. However, after the first season, a financial review indicated the firm was seriously in debt. The parties made good faith attempts to negotiate various solutions to the firm's financial problems, but ultimately were unable to reach an agreement. Contrary to the partnership agreement, the defendant (and plaintiff by counterclaim), Mr. Dupuis, then acted unilaterally in dividing the firm's assets and liabilities between the partners.

[3] The plaintiff, Mr. Dryden, was left to deal with a $60,000 loan secured against his Ontario home, which was ultimately foreclosed upon by the bank. He claims that he was unable to continue surveying in the Yukon with the assets left to him by Dupuis. Although he found other employment on a somewhat irregular basis, his financial situation continued to deteriorate and he says this contributed to his inability to prevent the foreclosure.

[4] Dupuis began another survey proprietorship in Whitehorse, using the equipment he had retained from his division of the firm's assets. He says he also eventually repaid those liabilities of the firm which he took responsibility for, consisting of a line of credit due to the Federal Business and Development Bank ("FBDB") and other debts, totalling $54,000.

[5] This trial is taking place more than 14 years after the partnership foundered. Dryden, in his statement of claim, primarily seeks a fair and reasonable division of assets and an accounting of losses, based upon section 10 of the agreement. In his statement of defence and counterclaim, Dupuis seeks damages (and alternatively, a setoff) for an alleged breach of the partnership agreement by Dryden. He focused much

of his evidence and his submissions upon the reasons for the breakdown of the partnership, suggesting that Dryden was to blame.

ISSUES

[6] There are three issues:

Issue 1: *In the absence of an agreement between the parties on the dissolution of the partnership, was Dryden entitled to a liquidation of the partnership with the profits and losses divided between the partners?*

Issue 2: *Did Dupuis' distribution of the assets of the partnership amount to a "distribution in kind" under section 10.5 of the partnership agreement?*

Issue 3: *If the answer to #1 is "yes" and/or the answer to #2 is "no", what is an appropriate remedy?*

FACTS

[7] The parties met in 1976 and were the best of friends. Both eventually qualified as Canada Lands Surveyors; Dryden received his commission in 1978 and Dupuis in 1981. They worked together for a period of time with the federal government, principally in Ontario. In 1982, Dupuis moved to Whitehorse to continue his federal government work as an Assistant Regional Surveyor. Dryden was employed with the federal International Boundary Commission (the "IBC"), based in Ottawa, for 10 years commencing in 1979.

[8] Dupuis moved back to Ottawa, for family reasons, in 1988. Dryden assisted Dupuis in finding employment with the IBC. They worked together out of that office and eventually began to discuss the prospect of survey work in the private sector in the Yukon. In particular, Dupuis was optimistic that the demand for professional surveyors would increase with the expected finalization of a number of Yukon land claims agreements.

[9] The pair travelled to Whitehorse in January 1989 on a reconnaissance trip with a view to establishing a survey business here. They met with a number of contacts in the public and private sector, an accountant and a local lawyer. The partnership agreement was prepared and signed by the parties on January 12, 1989, creating the firm “Arctic Surveys & Consulting”.

[10] As neither party had any prior small business experience, they sought and obtained advice on how to get started. Dryden had significant equity in his Merrickville, Ontario home, whereas Dupuis had comparatively little equity in his newly purchased home in the Ottawa area. Therefore, they decided to try to borrow money from a bank, using Dryden’s home as security. In early 1989 the pair obtained a loan from the Royal Bank of Canada for $60,000. On behalf of the firm, Dryden signed a guarantee to the Royal Bank for that loan and the bank subsequently placed a second mortgage on Dryden’s home for $45,500. The evidence is unclear as to why the mortgage was not for the full amount of the $60,000 loan. Although not much turns on the point, I will return to it later.

[11] The parties prudently purchased approximately 90 to 95% of the survey and office equipment required by the firm from federal government surplus auctions in the Ottawa area. They also bought a 1981 Chevrolet van and a 5-ton truck. The van was to be used for day-to-day survey operations and the 5-ton truck was to help move the families and goods of the respective partners to the Yukon. Coincidently, each of the partners also restored older cars as a hobby. As a result, Dupuis put a restored 1955 Pontiac into the firm and Dryden contributed two restored Jeeps; a 1948 and a 1981.

[12] The pair drove across Canada to the Yukon in April 1989, with Dupuis driving the Pontiac towing one Jeep and Dryden driving the Chevrolet van towing the other Jeep. All the vehicles were laden with the recently purchased equipment. Dupuis said it was “an exciting time”, as both parties looked forward to establishing their new business together. Their families remained in Ontario, along with the 5-ton truck, which was to be used to move the families to the Yukon in due course.

[13] They arrived in Whitehorse and borrowed an additional $30,000 from FBDB for working capital. They rented commercial office space, hired some staff and began looking for work. The first summer season went relatively well and the firm began to generate income.

[14] Around the end of August 1989, the parties determined that it was becoming too expensive to continue renting their commercial office premises. About that time, Dupuis had also arranged to move his family to Whitehorse from Ontario and was looking to purchase a home here. The parties agreed that the firm would rent office space within the Dupuis’ new home. Consequently, approximately $7,600 of partnership funds was added to the Dupuis’ down payment, resulting in a considerably reduced interest rate on the Dupuis’ mortgage. The amount contributed by the firm to the down payment was understood by the parties to be an advance on the firm’s rent of the home office for one year.

[15] The largest contract secured by the firm that first season was with the Teslin Indian Band, as they were then called, to survey the Fox Point West subdivision for approximately $20,000. Dryden was the assigned surveyor for that job. He completed the fieldwork by November 10, 1989. However, he was much more derelict in completing

the final plan for registration with the Regional Surveyor – a fact which would come back to haunt him, as I will discuss later.

[16] As things began to wind down at the end of the 1989 survey season, the parties talked about how they would occupy themselves through the winter months. Dupuis decided to take a job teaching surveying at the Yukon College for approximately 8 hours per week. He also intended to restore an older model car at the same time, presumably for a later sale and profit. While Dryden initially had similar plans to restore an older model truck, he utilized his extensive history as a military reservist and accepted a contract with the Department of National Defence (“DND”) in Yellowknife, to last until May 15, 1990.

[17] The parties maintained contact by telephone over the winter of 1989 – 90. In February 1990, Dryden returned to Whitehorse for the annual “Rendezvous” celebrations. Dupuis asked him how he was doing with the completion of the plans for the Fox Point project. There was also some discussion about when they would be starting the firm’s survey work in the spring. Finally, the parties recognized that they had to have a financial statement prepared for the firm for the year ending 1989. Dryden went back to Yellowknife to continue his DND contract.

[18] In Whitehorse, Dupuis began general preparation for the 1990 season as well as arranging for a financial review of the firm’s performance by Mr. John Allen. To complete this financial review, Dupuis directed that one of his staff review the bookkeeping and accounting records of the firm, calculate totals and provide all the necessary information for Mr. Allen. Dupuis also met with Mr. Allen during this financial review. He conceded at

trial that Mr. Allen's figures, while they may not be 100% accurate, are "probably in the ballpark and close".

[19] With respect to the Fox Point contract, Dupuis prepared a draft plan on Dryden's behalf, which was 90 to 95% complete. He was unable to complete the plan because of certain calculations which he was unsure about, as Dryden's field notes contained two sets of entries for some of the measurements. In any event, Dryden had to "sign off" the plan, as he was the designated surveyor. Dupuis sent this draft plan to Dryden while in Yellowknife, however Dryden failed to complete it at that time.

[20] As it turned out, Dryden was able to leave Yellowknife somewhat earlier than planned and returned to Whitehorse on May 4, 1990. He was met at the airport by Dupuis. The pair went to the firm's offices to discuss Mr. Allen's financial report, which had been sent to Dryden for his review while in Yellowknife. The report stressed the firm's heavy debt load and the need for aggressive and immediate action to reduce the firm's financial liabilities. The report essentially set out a number of options:

(a) One partner buys the other out;

(b) Dissolution of the partnership;

(c) Continuation of the partnership with one working partner and one investing partner;

(d) Continuation of the partnership with two working partners, each drawing an income from the firm.

[21] Dryden was disappointed by the prospect of selling his interest in the partnership, or dissolving it, so soon after starting the business. Dupuis, on the other hand, was most

interested in buying out Dryden's share of the firm, which he intended to continue to operate as a family business.

[22] A number of meetings and discussions involving the parties, and occasionally Mr. Allen, took place over the following 10 days. While there is disagreement between them as to when the meetings occurred, those differences are not material.

[23] After the initial meeting on May 4th, Dryden undertook his own brief review of the bookkeeping records used to prepare the Allen report.

[24] A meeting took place on the evening of Sunday, May 6th, in Dupuis' living room, where Dupuis proposed that:

(a) he would eventually buy out Dryden;

(b) he would take over all the firm's debts;

(c) he and his wife would help Dryden obtain a job with the Yukon Government and Dryden would continue to work for the firm until obtaining such employment;

(d) Dryden could use the firm's 5-ton truck to move his goods and family to the Yukon; and

(e) he and his wife would help Dryden establish his own survey business in the Yukon in approximately 3 to 5 years.

Dryden said that he was treated well by the Dupuis during this meeting and, while he was disappointed with this proposal, he nevertheless felt it was fair.

[25] Soon after the May 6th meeting, a draft agreement to dissolve the partnership was prepared by Dupuis' lawyer, Lorne Austring. The parties met to review the draft agreement. Several amendments were discussed and written into the draft by hand; however, it remained unsigned.

[26] According to Dryden, he was not presented with the draft dissolution agreement prepared by Dupuis' lawyer until Monday, May 14th. He refused to sign it because he wanted to obtain independent legal advice about the dissolution. Dupuis was upset by this, because he thought the parties had put a good deal of time and effort into trying to resolve the matter to that point.

[27] Also on May 14, 1990, Dupuis drafted a letter to Dryden indicating that John Allen would be acting as his "agent" in any further discussions regarding "the continuation of or dissolution of our partnership". Dryden was provided with this letter on May 15th. Mr. Allen did in fact subsequently act as Dupuis' agent.

[28] Interestingly, Dupuis and his wife prepared an additional one-page draft agreement containing 12 terms which Dryden would have to abide by "in order to keep the partnership of Arctic Surveys intact". This one-page draft would have given Dupuis total control of the firm. Dryden was to be deprived of signing authority, firm credit cards and the use of all firm vehicles. Dupuis said that his intention in preparing this document was to ensure that Dryden would finish his projects. He did not give a clear explanation as to why the document was premised on keeping the partnership "intact", as Dupuis' strategy throughout the 10 days of negotiations was otherwise focused on buying out Dryden's interest in the firm.

[29] On May 16th, Dryden was given the one-page draft agreement. He refused to sign it also. He testified that he was insulted by it, and Dupuis acknowledged during his testimony that he knew Dryden was not happy upon receiving the document.

[30] I find that, at some point between May 14th and 16th, Dryden indirectly threatened the lives of Dupuis and his family. Dryden did not recall making the threat, but acknowledged in his testimony that at his examination for discovery he said he "could have, in anger, said that" to Gordon Gibbs, an employee of the firm, and Mr. Gibbs' spouse, Sandra Gibbs. According to Dupuis this threat was relayed to him by Mr. Gibbs on Tuesday, May 15th. Dupuis was aware of Dryden's background with the military and took the threat seriously. He picked up his children at school and temporarily relocated them. Mrs. Dupuis and Mr. Gibbs then went to the RCMP to make a complaint, not with the intention of having charges laid, but to have the police speak with Dryden so that he would stay away from the Dupuis and their residence. Dryden did recall being stopped by the RCMP the week following May 18th and being directed to stay away from Dupuis. Although Dupuis acknowledged that Dryden complied with this direction, he referred to his family as being "terrorized" and "totally in a panic" about the threat. He determined that there was no possibility of any further negotiation with Dryden.

[31] Dupuis and his wife then decided that they would split the firm's assets between the partners. Dupuis did so using an inventory of the firm's equipment which he had prepared the previous winter. On Thursday, May 17th, he divided the equipment into what he determined to be two equal shares. He said that where there was only one of a particular item, he attempted to give Dryden another item of equal or greater value. For example, Dupuis retained the firm's computer, valued at approximately $4,000, and the

firm's survey transit, valued at approximately $2,500 (total: $6,500). To offset this, Dupuis gave Dryden the firm's 5-ton truck valued at $4,100 and the Chevrolet van, valued at approximately $3,900 (total: $8,000). In addition, when there were odd numbers of certain items (e.g. 3 tripods), he transferred the majority to Dryden. He said he was very meticulous in his distribution of the firm's equipment and even had two witnesses attend to observe the process: a friend, who was also an RCMP officer, and Sandra Gibbs, who was Dryden's cousin. Finally, Dupuis arranged for Gibbs to contact Dryden the following day, Friday, May 18th, and have him remove the vehicles which had been distributed to him, as well as the two Jeeps.

[32] On May 17th, Dryden learned that Dupuis wanted to remove the firm's office from his house.

[33] On Friday, May 18th, Dryden was informed by Mr. Gibbs that all of his effects had been loaded in the Chevrolet van and that Dupuis did not want to see him any more. Dryden recalls that he and Mr. Gibbs then removed the Chevrolet van and the two Jeeps from Dupuis' property.

[34] Further, because the firm had ongoing commitments and unfinished work to do, Dupuis decided that he would start up his own survey business in an attempt to honour those commitments. He said that he knew bills would be coming in and that he would have to pay them. He wrote to the Regional Surveyor on May 22, 1990, only days later, informing him that he was no longer associated with Arctic Surveys & Consulting and that he and his wife had opened up Agapae Surveys & Consulting as of May 18th. He stated that the new entity was fully equipped as a survey firm to do all types of projects and that "it is business as usual for Agapae Surveys".

[35] Dryden sought advice from his lawyer, Brian Morris, who wrote to Dupuis' lawyer on May 30, 1990, advising that Dryden was holding Dupuis "liable in damages" for breach of the partnership agreement. An exchange of correspondence between the two lawyers ensued over the following months, with Dryden's counsel taking the position that the assets of the partnership must be sold and applied to the liabilities.

[36] A meeting was arranged between the parties on November 9, 1990, where certain proposals were made but no agreement was reached. Dupuis thought an agreement had been reached, but there is no objective evidence to confirm that. In particular, there is nothing from the lawyers for either party verifying an agreement from that meeting. Finally, when Mr. Morris wrote to Mr. Austring on January 8, 1991, revising an earlier proposal from Dryden, Dupuis instructed his lawyer not to respond.

[37] Dupuis determined that he would take responsibility for the loan from FBDB, which sat at about $29,000 to $30,000 at the time of the dissolution of the partnership, as well as numerous other of the firm's debts. Dupuis testified that in 1998 he paid the last of these debts, totalling approximately $54,000.

[38] Dryden, on the other hand, began a long slide into financial ruin. To use his words, Dryden was "messed up that whole summer" of 1990. He travelled to Ontario in an attempt to refinance the loan with the Royal Bank. However, as he was not working at that time, he was unsuccessful. While in Ontario, he looked for, but was unable to obtain, employment. He moved his personal belongings out of the Merrickville home and placed them in storage, in the event that the Bank should proceed with foreclosure. He auctioned off some personal property and netted about $15,000. However, rather than applying that towards the Royal Bank loan, he spent approximately $12,000 relocating

his then common-law spouse from Ontario to Quebec. He began drawing on his RRSPs for income and fell behind on child support from his previous marriage.

[39] He listed the Merrickville house for sale and returned to Whitehorse to look for work. He also travelled to British Columbia and Alberta for the same reason. In August 1990 he was able to obtain some modestly paid employment with a surveyor in Whitehorse. In November 1990 he took a position with DND earning approximately $36,000 per year.

[40] During a 2-week break in December 1990, he returned a second time to Ontario to deal with the house. He found it vandalized. He unsuccessfully attempted to rent it. At that point he essentially gave up on the Merrickville home and went back to Whitehorse.

[41] Although the Royal Bank proceeded with the foreclosure and eventual sale of that house, there was a deficiency of approximately $11,000 on the foreclosure. There was also an additional debt arising from the $14,500 difference between the amount of the secured debt of $45,500 and the total amount of the loan of $60,000. The Royal Bank continued to pursue Dryden for these amounts by garnishment of his DND wages. This resulted in DND failing to renew its contract with Dryden, leaving him unemployed once again.

[42] As for the Fox Point project contract, shortly after the dissolution of the partnership, the Regional Surveyor pressed Dryden to register the completed plan of survey. A series of letters were sent to Dryden demanding that he complete his professional obligations on that job. Dryden sought and obtained some extensions, but ultimately the Regional Surveyor pursued disciplinary action. The matter was set for a hearing before the Board of Examiners for Canada Lands Surveyors on April 15, 1993.

Just prior to that hearing, Dryden was able to complete a plan of survey for the job, which he forwarded to the Regional Surveyor. However, the Board of Examiners apparently felt that was too little, too late. The Board found Dryden guilty of professional misconduct amounting to gross negligence and cancelled his commission as a Canada Lands Surveyor. To the parties' knowledge this is the first time in history that such a commission has been cancelled.

[43] Dryden moved to Alaska in 1994. He has since become something of a professional student, obtaining a couple of masters degrees and continuing to obtain extensions on his student visa and his student loans. His financial situation is still far from stable and he now owes about $35,000 in student loans and about $35,000 in child support. There was no evidence as to the current status of the Royal Bank debt.

[44] Dupuis, on the other hand, moved from the Yukon in 2001. He is presently situated somewhere in the Province of British Columbia. He does not wish to have his actual address disclosed, as he still fears Dryden as a result of the threat. Dupuis says that he is renting his home, has no savings and is currently unemployed.

ANALYSIS

Issue 1: In the absence of an agreement between the parties on the dissolution of the partnership, was Dryden entitled to a liquidation of the partnership with the profits and losses divided between the partners?

[45] Section 41 of the *Partnership and Business Names Act*, R.S.Y. 2002, c. 166, (the "*Act*"), essentially says that on the dissolution of a partnership, each partner is entitled to have the property of the partnership applied towards payment of the debts of the firm

and to have the surplus paid to the partners, after deducting anything they may owe to the firm.

[46] Section 34 of the *Act* deals with notice of intention to dissolve the partnership and section 46 sets out certain rules to be followed after a dissolution. However, both sections 34 and 46 are “subject to any agreement” between the parties. In this case, there is a written partnership agreement dated January 12, 1989 and it ultimately determines the outcome of this litigation.

[47] Dupuis emphasized in his defence and counterclaim that Dryden was in default of the agreement for not devoting his full energy to the firm’s business. Dryden in turn alleged Dupuis was in default for competing against the firm after the breakdown. Section 8 of the agreement deals with events of default and entitles the non-defaulting partner to demand that the other cure such defaults within 30 days. If not, the continuing default triggers the availability of certain remedies by the non-defaulting partner, including exercising the option to purchase. In that event, the non-defaulting partner has the option of requiring the defaulting partner to sell his interest in the firm, upon receiving written notice. A purchase price in that scenario would be the “fair value” of the defaulting partner’s interest at the time the option is exercised, less 20%. Section 9 of the agreement specifies how “fair value” is to be determined.

[48] However, the unfolding events eventually led the partners to a point of dissolution, rather than one party buying out the other, as contemplated in the “default” provisions. Therefore, I conclude that it is irrelevant whether one or the other party was in default, since neither exercised the option to purchase. Admittedly, there were

negotiations toward that end, but those negotiations did not bear fruit. Thus, I focus my analysis upon the application of section 10 of the agreement to the facts of this case:

- Section 10.1 essentially says that a partnership is to be considered “a continuing partnership”, unless certain events occur. However, none of those events include the unilateral departure of one partner from the firm.
- Section 10.2 says that, upon dissolution, the partners “shall proceed with reasonable promptness to liquidate and wind up the business of the Partnership.”
- Section 10.3 says that the profits and losses of the partnership shall be divided between the partners.
- Section 10.4 states that the proceeds realized by a liquidation of the business shall be applied:

  a) to payment of any partnership debts;

  b) to payment of any individual partner’s capital account; and

  c) if there are any excess proceeds, among the partners.

- Section 10.5 states that if dissolution and liquidation is conducted by the partners,

> then such … ***Partners*** … shall have the sole discretion either to sell any Partnership assets at public or private sale for what amount and on what terms as ***they*** may consider advisable, or to distribute and transfer the same among and to the ***Partners*** … in kind and pro rata in accordance with ***their*** respective Interests

> immediately prior to the event which resulted in dissolution. (emphasis added)

[49] Thus, when the parties reached the point of dissolution, section 10.2 triggered Dryden's entitlement to a liquidation of the partnership. Sections 10.3 and 10.4 then dictated that the profits and losses should have been divided between the partners, in this case equally, as the partners each held a 50% interest in the firm. Therefore, the answer to Issue #1 is "yes".

Issue 2: Did Dupuis' distribution of the assets of the partnership amount to a "distribution in kind" under section 10.5 of the partnership agreement?

[50] Section 10.5 of the agreement uses the plural "partners" and refers to an amount and terms "they may consider advisable". This immediately indicates that the process of distributing partnership assets in kind, as part of a dissolution and liquidation, must be a joint exercise in discretion between the partners. That is consistent with the following comment from the British Columbia Court of Appeal in *Seven Mile Dam Contractors* v. *British Columbia*, [1980] B.C.J. No. 1063, where Hutcheon J.A. said for the Court at paragraph 9:

> Certainly a partner has restricted rights with respect to the assets of the partnership as a result of the provisions of the Partnership Act. ***One partner***, as Mr. Wallace put it, ***cannot simply reach into the partnership unilaterally and remove or change a partnership asset. In concert, however, the partners may sell a partnership asset.*** In my opinion that is a sale by the partners of their individual interests in the specific asset. (emphasis added)

[51] I conclude that Dupuis failed to comply with section 10.5 of the partnership agreement when he unilaterally divided the assets. Therefore, the answer to Issue #2 is "no".

Issue 3: If the answer to #1 is "yes" and/or the answer to #2 is "no", what is an appropriate remedy?

[52] This is the most difficult question - what relief can now be granted to Dryden, over 14 years after the cause of action arose?

Position of the Parties on Damages

[53] At the close of his submissions, Dryden's counsel suggested that Dupuis should pay damages of $60,000. He attempted to justify this by stating that Dupuis got the "heart and soul" of the Arctic Surveys firm when he distributed the assets between the partners. Consequently, Dupuis was able to carry on a survey business under the name of his subsequent proprietorship, whereas Dryden was unable to do likewise. In effect, Dryden's counsel says that Dupuis received the bulk of the most valuable assets of the firm, and therefore should have taken on all the liabilities. However, this submission ignores the potential cash value (after sale) of the assets distributed to Dryden by Dupuis.

[54] Dupuis submitted that he divided the assets as fairly as he could at the time. As for the outstanding liabilities, he said that Dryden removed some documents from the firm's home office upon the dissolution of the partnership. As I understand Dupuis' argument, this, coupled with the fact that Mr. Allen died about four years ago, prevents this Court from now making an accurate accounting of the liabilities.

Decision on Remedy

[55] Deciding upon an appropriate remedy at this late date is complicated by the intervening actions of the parties since the date of the effective dissolution of the firm, which I find to be May 18, 1990. There is also a weakness in Dupuis' evidence about the specific liabilities he claims to have paid off.

[56] My approach assumes that, upon the effective dissolution of the partnership, pursuant to section 10 of the partnership agreement, the partners ought to have liquidated (that is, sold) the assets of the firm and applied the proceeds to payment of the firm's debts. Since that was not done, I must now attempt to equalize the interests of the partners and to put them in the position they would have been in had section 10 been complied with. In doing so, I have largely ignored the effects of the intervening actions and circumstances of the parties upon their current respective financial positions. There is no clear causal connection between what *should* have been done 14 years earlier, but was *not* done, and the situations of the parties today.

[57] I accept the submission of Dryden's counsel that Mr. Allen's report is the best evidence available of the firm's financial position as of March 31, 1990, which was just a few weeks prior to the effective dissolution of the partnership. Although Mr. Allen referred to his report as a "management review" in his cover letter to Dupuis, he also referred to his tabulations as "interim financial statements" in his attached statement of account to the firm. The report was based upon material provided by Dupuis specifically for that purpose. Dupuis also met with Mr. Allen during the preparation of the report. Indeed, Dupuis, in his statement of defence at paragraph 9, referred to the report as a "financial statement and management review". Although there is some evidence that,

after this report was prepared, Mr. Allen acted as Dryden's agent and therefore took an adversarial position in the conflict between the two parties, there is no evidence that he was lacking impartiality at the time he prepared the report. I therefore accept it as credible and reliable.

[58] In my analysis of the accounting of assets and liabilities, I have periodically found corroboration in the exchange of correspondence between the lawyers for the parties between May 1990 and January 1991 – a time when the figures would have been relatively fresh in the minds of the parties.

[59] I also accept Dupuis' evidence that he distributed the assets between himself and Dryden as fairly as possible. In doing so, he relied on a previously prepared, apparently complete, and recent inventory of office equipment. He also took the trouble to ensure that witnesses were present upon the distribution of the assets, presumably to counter any suggestion of unfairness. I have already determined that he did not have the right to unilaterally divide the assets; however, once he began, I accept that he did so in a fair and reasonable manner. That said, I also recognize that Dupuis ended up with most of the immediately useful survey equipment, whereas Dryden largely ended up with assets which he would have to liquidate in order to purchase new survey equipment. Nevertheless, I look at this distribution purely from the point of view of the likely cash value of the assets, had they been liquidated at the time. In that regard, I find that each partner received assets of equal value.

[60] I note Dryden testified that Dupuis failed to sign over ownership (registration) of the van and the 5-ton truck. However, on cross-examination Dryden conceded that he similarly failed to sign over ownership of the 1955 Pontiac to Dupuis. In any event,

Dupuis testified that he was later able to change the Pontiac's registration to show Agapae Surveys as the new owner, without the need for Dryden's signature. Therefore, I conclude that, had Dryden then chosen to sell these vehicles, he could have resolved the issue of the registration in order to do so.

[61] According to the Allen report, the fixed assets of the firm were assessed at $47,803 for equipment and $23,000 for vehicles, for a total of $70,803. (Since I am dealing with rough numbers throughout, I will round them up or down to the nearest $1,000, where applicable.) Therefore, I find that at the point of dissolution the firm had assets of approximately $71,000. I further find that those were divided equally by Dupuis so that each partner received approximately $35,500 worth of assets.

[62] What remains is to try to equalize the division of the firm's liabilities, retroactively, between the parties. This task is complicated not only by weaknesses in Dupuis' evidence, but also because Dupuis benefited from two significant expenditures by the firm for his moving costs and the down payment on his house.

[63] Firstly, the moving costs were assessed by Mr. Allen at $11,307, which I round down to $11,000. I note that the same amount of $11,000 was claimed by Dryden's counsel in his letter of May 30, 1990, as an amount which must be repaid to the firm. Presumably, this covered the cost of moving Dupuis' belongings to the Yukon in August 1989 in the 5-ton truck as well as the airfare and related expenses for his family. I recognize that certain of Dryden's belongings were also transported during this move, and consequently he received some benefit from it. Nevertheless, in general terms, it was Dupuis and his family who received the principal benefit from the firm's expenditure of $11,000 for this move.

[64] Secondly, Dupuis agreed on cross-examination that the firm advanced him $7,600 to be added to the down payment on the home he purchased in Whitehorse in August 1990. That amount was intended by the parties to be an advance to Dupuis for the firm's rental of office space within the Dupuis home for the following 12 months. That equates to a rounded value of approximately $600 per month. In fact, the firm did benefit from using this office space from approximately September 1989 to and including May 1990, being a total of nine months. At $600 per month, that results in a value of $5,400, which was properly a debt of the firm payable to Dupuis.

[65] On the other hand, Dupuis benefited from the lower interest rate on his mortgage which resulted from the larger down payment. Unfortunately, there is no evidence of how much Dupuis saved in this regard and I am unable to precisely quantify the benefit. However, there is evidence that Dupuis' mortgage was for $76,500 and that he and his family occupied the home for about 12 years, from 1989 until they moved from the Yukon in 2001. The total interest savings over that period would likely be considerable, even if the rate was only reduced by a percentage point or two.

[66] I find the interest benefit received by Dupuis offsets the $5,400 in rental notionally due to him from the firm. Consequently, the total amount of the $7,600 contribution to his down payment should have been repaid to the firm by Dupuis upon dissolution. I round that up to $8,000.

[67] I accept that Dupuis took over responsibility for the FBDB debt, as well as other of the firm's miscellaneous then current liabilities. There is a minor inconsistency between Dupuis' evidence, that the FBDB amount was $29,000 at the time of dissolution, and the Allen report, which suggests that liability was still at the full amount of $30,000. I note the

letter from Dupuis' lawyer dated July 13, 1990 also specifies the FBDB loan at $30,000. I find the $30,000 figure to be the best evidence of the FBDB liability.

[68] As for the other miscellaneous debts of the firm, there was a significant weakness in Dupuis' evidence. In paragraph 24 of his statement of defence, Dupuis sets out a number of specific debts he claims to have repaid on behalf of the firm, which when added to the FBDB loan ($30,000) would have totalled $42,600. Unfortunately, the alleged repaid amounts do not square with Dupuis' testimony, which was that he repaid a total of $54,000. Dupuis also filed documents apparently relating to some of the repaid debts referred to in the statement of defence. However, he did not specifically testify about any of these debts, with the exception of referring to payment of an account related to survey monuments. Further, Dryden's counsel at trial disputed the validity of a number of these alleged repaid debts. I have reviewed Dupuis' documents and they are far from being self-evident.

[69] It is not sufficient for a party, even when self-represented, to simply dump documents into the court record, without any explanation or clarification, and expect the Court to make findings of fact based on those documents.

[70] Nevertheless, I have based my findings in this area upon my interpretation of the evidence, such as it is. With specific reference to Dupuis' own documents, and linking the amounts of the debts as closely in time as possible to the date of the effective dissolution (May 18, 1990), I find that he eventually paid the following of the firm's debts:

(a)	Whitehorse Performance Centre	$ 827.19
(b)	Bank of Nova Scotia*	$ 6,174.20

(c)	Integraphics Ltd.	$ 2,619.72
(d)	Uniforge Ltd. ($1,838.70 + $284.40)	$ 2,123.10
TOTAL		$11,744.21

*I note the letter from Dupuis' lawyer dated July 13, 1990 specified the Bank of Nova Scotia overdraft at $6,000.

I round that figure up to $12,000.

[71] Therefore, I credit Dupuis with taking on and paying down a total of $42,000 ($30,000 FBDB + $12,000 miscellaneous) of the firm's liabilities following dissolution. However, I must deduct from that credit the amounts due from Dupuis to the firm for his moving costs ($11,000) and the down payment ($8,000), totalling $19,000. Therefore, Dupuis took on a net amount of $23,000 ($42,000 - $19,000) of the firm's debt after dissolution, whereas Dryden took on $60,000. Consequently, in order to equalize the position of the partners after dissolution, I find that Dupuis should pay to Dryden the sum of $37,000. That would result in each partner carrying an equal share of the firm's liabilities.

[72] I have not ignored the fact that there were various other expenditures incurred by the parties, which have not been accounted for in these reasons. These are referred to in the letters of Brian Morris and Lorne Austring dated May 30 and July 13, 1990, respectively. With respect to Mr. Austring's letter, a number of these items are alleged in paragraph 5 of Dupuis' statement of defence as debts due from Dryden. However, those claims were specifically contested by Dryden's trial counsel and Dupuis failed to provide evidence or argument to substantiate them. This decision on damages is based upon the relevant evidence tendered at trial, which unfortunately was sometimes lacking.

[73] Dryden did not claim pre-judgment interest in his statement of claim. Accordingly, none is awarded. However, I do award Dryden the costs of this action.

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GOWER J.