

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *McLellan v. McLellan*,
2003 YKSC 68

Date: 20031118
Docket: S.C. 00-D3250
Registry: Whitehorse

Between:

LAURA PATRICIA MCLELLAN

Petitioner

And:

DOUGLAS HUGH MCLELLAN

Respondent

Before: Mr. Justice P. McIntyre

Appearances:

Laura Patricia McLellan
Emily Hill

On her own behalf
For the Respondent

**MEMORANDUM OF JUDGMENT
DELIVERED FROM THE BENCH**

[1] MCINTYRE J. (Oral): This interesting matter deals with the interpretation of a consent corollary relief order granted the 16th of October of 2002.

[2] The order provided, in paragraph 9:

The Petitioner and the Respondent shall sell the Family Home and distribute the proceeds as follows:

- (a) the first and second mortgages on the home will be paid out in their entirety;

- (b) should there be equity remaining from the sale after the payment set out in subparagraph (a) herein, any outstanding tax adjustment, legal fees and real estate fees arising from the sale of the home will be paid in their entirety;
- (c) should there be an equity remaining from the sale after the payments set out in subparagraphs (a) and (b) herein, the Petitioner shall receive the sum of \$2,658.00; and
- (d) the remainder of the equity of the sale after the payments set out in subparagraphs (a), (b) and (c) herein, if any, will be split equally between the Petitioner and Respondent except for the equity earned from and after August 6, 2002, which equity shall go to the Petitioner.

[3] Now with respect to this, as I understand it, the evidence is, and I think I can look at this evidence, that the home was listed on August 6, 2002 for the amount of \$169,500, and that it was taken off the market after that, and there were some repairs done to the home. It is a matter of dispute as to the value of the repairs.

[4] The applicant, who acts for herself, very vigorously asserts that she worked hard and long with respect to this.

[5] The respondent says, well, they are just typical or ordinary repairs.

[6] Leaving that aside, my attention is directed to the case of *Farenick v. Farenick*, [1981] S.J., No. 1218, where Madam Justice Carter in that case was dealing with a separation agreement; in fact, at paragraph 12 in particular, dealt with the question of surrounding circumstances and dealt with the particular clause and decided that the intention of the parties in this particular case was that the word "equity" meant the decrease in the mortgage capital and it did not contemplate inflationary increases. Madam Justice Carter says that at paragraph 16.

[7] As I have said to counsel during the course of argument, if I consider this to be an ambiguous phrase, then I would turn to other evidence, but I do not consider this to be an ambiguous phrase.

[8] In fact, I understand the *Farenick, supra*, case, and I can understand the reasoning there. But, in fact, in paragraph 9, the word "equity" is not used as something that reflects reduction in capital. Only by simply reading the words that I have read, equity is a very large word in the context of paragraph 9, and what it really means, in my view; in the context of this consent corollary relief order, is the value.

[9] In my view, this is not ambiguous and the equity earned from and after August 6, 2002 shall go to the petitioner. Equity, and sorry if I am repeating myself, is used particularly in paragraphs (b) and (c) of the order in a way that is inconsistent, in my view, with the interpretation urged upon me by counsel for the respondent.

[10] In my view, the proper interpretation is that the value of the property; any increase or inflationary value included in that should go to the petitioner.

[11] So thank you very much for your arguments.

[12] Therefore, in summary, the increase in value will go to Ms. McLellan.

MCINTYRE J.