



Scott T. Taylor

Family Lawyer & Mediator

Lady Luck

Category: Division of Assets

Minh Kien Le had every reason to feel lucky in 1999, ten million reasons to be exact. That was the year that Le had bought the winning lottery ticket in the ten million dollar

Super Seven lottery. Unfortunately however for Le, he was not so lucky in love. This week Le's now former wife Mai Huong Cao was awarded in B.C. Supreme Court divorce proceedings, an equal share of the winning monies held by Le in his investment account.

Le and his wife had arrived in B.C. in the late 1970's, part of the wave of Vietnamese boat people fleeing to a better life in Canada. They initially settled in Terrace and in 1984 moved to Vancouver. While I have not yet had the opportunity to review the court's judgement it appears from what I have read their married life was troubled, marked with a series of separations and reconciliations. But it also appears, notwithstanding their differences that they continued to be involved in a variety of financial and business transactions, including purchasing several houses. Cao also borrowed monies from her husband for investment purposes in Vietnam.

One of the key issues to be decided by the court was whether or not Cao was legally entitled to share in Le's investment account, where Le had deposited the balance of his winnings. In effect, the court was required to determine if the investment account was a family asset, and accordingly divisible. In the court's view because Le had used the monies in this account for a "family purpose" the entire investment account became a family asset, meaning that Cao was entitled to an equal share, after the repayment to Le of loans by Cao.

The law in B.C. which determines how a court is to decide whether an asset is a family asset is set out in Section 58(2) of the Family Relations Act.

This Section states that "Property owned by one or both spouses and ordinarily used by a spouse... for a family purpose is a family asset". "Ordinarily used", means in the usual course of family life, not an occasional or incidental use, although even occasional use if combined with an intention to use the asset for a family purpose could result in a finding that the asset is a family asset. For example, it has been found that family vacations to a husband's rural property amounted to no more than occasional use, not ordinary use, and therefore the property was not a family asset.

A "family purpose" means that there must also be some connection between the asset and the family, not merely a use by one or more of the family members. However, a family purpose has been given a broad definition by the courts, and if there is evidence that, for example, the asset was purchased or held for the benefit of the family, it is likely that this will constitute a family purpose, and the asset will be deemed a family asset.

So if you begin to feel lucky, it's wise to remember that what you do with your assets during your marriage can have a huge legal impact on how such assets are shared, or not, during separation or divorce. To put it simply, couples who play together, pay together. 🍀