

CANADA / JUDGMENT

672047 B.C. Ltd. v. Johal

2023 BCSC 2261

COURT

Supreme Court of British Columbia

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2023 BCSC 2261 672047 B.C. Ltd. v. Johal

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

672047 B.C. Ltd. v. Johal,

2023 BCSC 2261

Date: 20231228

Docket: S218268

Registry: Vancouver

Between:

672047 B.C. Ltd. and Avtar Singh Johal

Plaintiffs

And

Harvinder Singh Johal and Susan Frances Little

Defendants

Before: The Honourable Justice J. Hughes

Reasons for Judgment

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Place and Dates of Trial:

Vancouver, B.C.

April 24-28,

May 5 and 23, 2023

Place and Date of Judgment:

Vancouver, B.C.

December 28, 2023

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Overview

- [1] This is a claim brought by the plaintiffs, Avtar Singh Johal and 672047 B.C. Ltd. ("672047"), against his son, Harvinder Singh Johal, and former daughter-in-law, Susan Frances Little. Due to Avtar and Harvinder having the same surname, I will refer to them by their first names. I mean no disrespect in so doing.
- [2] At issue is the nature of an April 2010 transfer of \$500,000 from 672047's bank account (the "Funds") by Avtar to Harvinder. The Funds were advanced to assist Harvinder and Ms. Little in purchasing a family home, and were used towards the eventual purchase of a property on Grand Boulevard in North Vancouver (the "Grand Boulevard Property").
- [3] The key issue for determination is whether the Funds were advanced as an equity investment, a loan, or a gift. The plaintiffs allege that the Funds were an equity investment and accordingly, claim an equity interest in the Grand Boulevard Property. Harvinder asserts that the Funds were an interest-free loan to the defendants. Ms. Little's position is that the Funds were a gift.

Factual Findings

- [4] From the mid-2000s through 2016, Harvinder and Avtar invested in land development projects through Ethical Real Estate Ventures ("Ethical Ventures"). Each held their investments in Ethical Ventures through numbered companies that they acquired in 2005: Avtar through his company 672047, and Harvinder through his company 682822 B.C. Ltd ("682822").
- [5] In March, June and August 2007, Avtar made multiple loans totalling approximately \$425,000 to Harvinder and 682822 for the purpose of funding 682822's investment in Ethical Ventures. Harvinder and 682822 repaid these loans in September 2007.

- [6] The defendants met in late 2007. At that time, Harvinder was working in the information technology field, and Ms. Little was working as a teacher.
- [7] In December 2007, Harvinder's sister passed away and he inherited the bulk of her estate, including a life-insurance payout of \$152,948.65 and a condominium located on Guildford Way in Port Moody, British Columbia (the "Guildford Condo").
- [8] The defendants commenced living together in a marriage-like relationship in March 2008. At this time, they were living in a condominium in East Vancouver (the "Vancouver Condo"), which was registered in Ms. Little's name. Ms. Little purchased the Vancouver Condo prior to her relationship with Harvinder, with financial assistance of \$10,000 from her mother.
- [9] In June 2008, Harvinder sold the Guildford Condo and realized net sale proceeds of \$331,402.53.
- [10] Harvinder was unemployed from February 2009 through to January 2012. He and Ms. Little supported themselves on Ms. Little's teacher's salary, the life insurance payout and proceeds of sale from the Guildford Condo.

Defendants' Initial Efforts to Purchase a Home

- [11] Harvinder and Ms. Little were married on July 11, 2009. Shortly thereafter, they began taking steps towards purchasing a family home. In furtherance of this, in September 2009, Harvinder advanced \$114,572.86 to discharge the remaining balance on the mortgage on the Vancouver Condo. The defendants also returned the \$10,000 that Ms. Little's mother had gifted her for the purchase of the Vancouver Condo, along with an additional \$5,000. The repayment to Ms. Little's mother was done at Harvinder's suggestion because he considered it the right thing to do, and the defendants had the funds to do so at the time.
- [12] The Vancouver Condo was sold on October 28, 2009, yielding net proceeds of \$272,371.91. Avtar's long-time lawyer, Jalal Jaffer, assisted the defendants with the transaction.
- [13] In the fall of 2009, the defendants were working with a mortgage broker, Maciek Wronski, to obtain mortgage financing for their prospective home purchase.
- [14] On October 13, 2009, Harvinder emailed Mr. Wronski, noting that their search for a home was "tough going" and that they'd recently had an offer rejected because the seller was "really high on price". Harvinder also wrote the following:

Curious what the bi-weekly or monthly payments would look like for Susan and I if we maxed out at \$420K? We're talking about borrowing a bit from my folks to help us with payments but like to do it on our own if we can until we sell more condos that is.

- [15] At this time, the defendants were looking at properties primarily on the North Shore. The defendants made several unsuccessful offers to purchase, including on a property at 10th and Quebec in Vancouver, and two properties in West Vancouver, on Haywood Avenue and 13th Street, respectively.

Request for Financial Assistance

- [16] The defendants realized that even with their pooled funds of approximately \$750,000 and mortgage financing in the range of \$420,000, they could not afford to purchase the type of home they wanted with only Ms. Little's income available to them to qualify for a mortgage. Accordingly, they discussed Harvinder approaching his parents to ask for assistance in purchasing a property. The defendants regularly went to Harvinder's parents' home for dinner on Sunday nights, and on one such occasion, a discussion occurred in Avtar's home office in which Harvinder asked Avtar for help in purchasing a home.
- [17] Harvinder could not recall when this discussion occurred, other than that it was sometime in late 2009 or early 2010. Avtar's recollection was more specific: he testified that the conversation occurred in February or March 2010, but no earlier. Ms. Little testified that the discussion occurred between the January 2010 offer on the Haywood property and their March 2010 offer on a property on Inglewood Avenue in West Vancouver ("Inglewood Property"). She testified that it likely occurred in or around March 2010. I prefer Ms. Little and Avtar's evidence on this point to Harvinder's.
- [18] Considering the evidence as a whole, I find that this discussion occurred early in March 2010. Ms. Little testified that she, Harvinder and their mothers went on a Caribbean cruise when the Olympics were in Vancouver in February 2010; in light of this, I find it unlikely the discussion occurred before they returned from that trip.
- [19] That the discussion occurred in early March 2010 is also consistent with the offers of purchase and sale made by the defendants at the relevant times, which show that they were able to offer on more expensive properties in March 2010 than previously. Prior to March 2010, the defendants made offers on properties in and around the \$1 million range, including the January 2010 offer on the Haywood property at \$1.165 million. However, by March 2010, the defendants were able to obtain an accepted offer on the Inglewood Property at \$1.425 million, and their accepted offer on the Grand Boulevard Property was for \$1.3 million.
- [20] Ms. Little remained steadfast in her evidence that she was present during the March 2010 discussion. Avtar and Harvinder's evidence regarding who was in attendance and what was said at the March 2010 discussion shifted over the course of the litigation. Harvinder initially testified that only he and Avtar were present when he asked for a loan. He then conceded in cross-examination that he first spoke with his father alone, and then Ms. Little joined the discussion. When being cross-examined by Ms. Little, Avtar's evidence changed from not recalling whether Ms. Little was present, to agreeing that she was not present when cross-

examined by Harvinder, to reverting back to saying he could not recall. On balance, I find that Harvinder first spoke with Avtar alone and made the request for financial assistance, but Ms. Little joined the discussion thereafter.

- [21] As to the substance of the March 2010 discussion, Harvinder and Avtar's evidence again shifted over the course of the litigation from Harvinder having asked for "help" or "financial assistance" to specifically asking for a "loan". What remained consistent was that Harvinder asked Avtar for \$500,000 to help the defendants purchase a home.
- [22] Ms. Little testified that after Harvinder asked Avtar for help, Avtar said words to the effect that since Harvinder was his only son and Ms. Little his only daughter-in-law, he was happy to give them the funds they needed to help them purchase a family home. Avtar and Harvinder denied that this statement was made. Harvinder's denial stands in contrast to the evidence he gave on discovery, where he conceded that the discussion recounted by Ms. Little "sounded familiar".
- [23] Considering the preponderance of the evidence and factoring in my credibility findings as set out below, I prefer Ms. Little's evidence on this point and find that in response to Harvinder asking for \$500,000, Avtar offered to gift those funds to the defendants. In my view, this is consistent with the prevailing factual context in which:
- a) little more than two years had elapsed since Harvinder's sister passed away, leaving Harvinder as Avtar's only surviving child and the sole beneficiary of his parents' estates;
 - b) the defendants had been trying to start a family since 2008 and had gotten pregnant in December 2008, but then suffered a miscarriage in January 2009; and
 - c) Avtar had a history of providing financial assistance to Harvinder in circumstances where that assistance resulted in a financial benefit to Harvinder, i.e. Harvinder would not have been in a position to invest in Ethical Ventures and thus share in the profits generated by the sale of its condominium developments, absent Avtar providing the funds for him to invest.
- [24] In such circumstances, I find it entirely logical and plausible that a parent in Avtar's position and with his financial means would offer a gift of this nature to his son and daughter-in-law to help them purchase a home in contemplation of starting a family.
- [25] It is uncontested that Avtar and Ms. Little did not discuss the Funds at any time after March 2010.
- [26] Ms. Little testified that she and Harvinder only discussed the Funds on one other occasion. She testified that at some point in 2011, she was reviewing a list of wedding gifts they received and commented to Harvinder that his parents had not given them a wedding present. Ms. Little testified that in response, Harvinder said that his parents had given the defendants the Funds. Harvinder testified that he did not recall that conversation, did not recall if his parents gave them a wedding gift, and did not think that he and Ms. Little had the discussion she testified to.

- [27] This is another instance in which Harvinder's evidence was equivocal and thus difficult to accept. He did not deny the conversation outright, but simply testified that he could not recall whether it occurred or whether his parents gave them a wedding present. For her part, Ms. Little was adamant that the conversation occurred and I prefer her evidence on this point to Harvinder's as it is more consistent with the preponderance of the evidence before me.
- [28] At some point during their property search--he could not recall when--Harvinder created a spreadsheet (the "Spreadsheet") setting out the funds he and Ms. Little had available to them to purchase a home. The Spreadsheet lists the various sources of funds available to the defendants for their home purchase and notes an amount of \$500,000 in two instances. In a section titled "Total Savings", the amount of \$500,000 is first described as "Loan from Dad", then in a second table they are described as a "Gift". The total amount listed as to what the defendants could afford inclusive of the Funds was \$1,575,901.00. This suggests that the Spreadsheet was created at a point in time after Harvinder knew that Avtar would be providing the Funds to the defendants to assist with their home purchase.

Dominion Gift Letter--March 30, 2010

- [29] As of March 2010, Harvinder and Ms. Little had an accepted offer to purchase the Inglewood Property. They intended to finance the purchase with the Funds and financing through Dominion Lending Centre ("Dominion"). Dominion required that Harvinder, Ms. Little and Avtar execute a gift letter confirming that the Funds were being provided by Avtar as a gift (the "Dominion Gift Letter").
- [30] It is undisputed that the parties all signed the Dominion Gift Letter on March 30, 2010. Where this occurred is disputed, though two copies of this letter were tendered into evidence: one signed by all of Harvinder, Ms. Little and Avtar, and one signed by Avtar alone. In both instances, Avtar signed the Dominion Gift Letter as donor on behalf of himself and 672047.
- [31] The Dominion Gift Letter was specific to the Inglewood Property and provided in material part:
- I/We the undersigned Recipients(s) and Donor(s), hereby certify that:
- These funds are a genuine gift from the Donor(s) and do not ever have to be repaid, and
 - No part of the financial gift is being provided by any third party having any interest (direct or indirect) in the sale of the subject property, and
 - The Donor(s) is an immediate family member.
- [32] That same day--March 30, 2010--Harvinder, Ms. Little and Avtar met with Mr. Jaffer. It is undisputed that that the meeting was held at least in part to discuss certain issues that had arisen with the Inglewood Property. Whether the parties also discussed the Dominion Gift

Letter is disputed: Ms. Little says it was and that the parties signed it at the meeting; Harvinder and Avtar deny this. I need not resolve this dispute, other than to note that had Avtar felt the need to obtain legal advice about the Dominion Gift Letter, or sought to document his asserted contrary intention, he would have had a contemporaneous opportunity to do so.

[33] The purchase of the Inglewood Property fell through in early April 2010.

Scotiabank Gift Letter--April 6, 2010

[34] The defendants continued to search for a home and pursue options to finance the purchase, at least in part, with mortgage financing through Mr. Wronski. In early April 2010, the defendants obtained conditional approval for a mortgage with Scotiabank. Since some of the funds the defendants intended to use for their down payment were coming from business accounts, Scotiabank required a letter from a professional accountant.

[35] Mr. Vikas Kaushal was both Avtar and Harvinder's accountant. As such, Mr. Wronski's colleague, Greg Viger, requested that he provide an accountant's letter. In particular, Mr. Viger requested that Avtar confirm that "the client is entitled to an amount of \$500,000 which is being gifted to Harvinder from the Company account". Mr. Wronski forwarded Mr. Viger's correspondence with Mr. Kaushal to Harvinder on April 6, 2010. Harvinder was unsure whether he was the "client" being referred to in Mr. Viger's email, but it follows logically for that to be the case in the circumstances.

[36] Scotiabank also required a gift letter from the parties as a condition of granting a mortgage to the defendants. Accordingly, on April 6, 2010, the parties signed a second gift letter for the Scotiabank mortgage (the "Scotiabank Gift Letter"). The Scotia Bank Gift Letter was not tied to the purchase of a particular property. The Scotiabank Gift Letter provided in material part as follows:

This is to confirm that a financial gift in the amount of \$500,000 has been made to Harvinder Johal and Susan Little (name of borrowers) to assist in the purchase of a home. These funds are being provided as a gift and will not ever have to be repaid.

I/we further confirm that I/we am/are an immediate relative* of Harvinder Johal and Susan Little (name of borrowers) and that no part of the financial gift is being provided by any third party having any interest, direct or indirect, in the sale or purchase of the property being mortgaged.

[37] Avtar agreed on cross-examination that he read everything on both the Dominion and Scotiabank Gift Letters before signing them, including the representations that the Funds were a gift that would never have to be repaid. Avtar also acknowledged that he was aware that the gift letters were a condition of the defendants obtaining mortgage financing, and that the banks required his assurance that the Funds were a gift.

- [38] That same day, on April 6, 2010, Avtar provided Harvinder with the Funds by way of a bank draft drawn from 672047's Envision Financial account. Avtar gave the bank draft to Harvinder who thereafter deposited the Funds in his account, where they remained, accruing interest, until the defendants eventually purchased the Grand Boulevard Property in June 2010.
- [39] Only Harvinder and Avtar were present when Avtar gave the bank draft to Harvinder. Neither testified to any further discussion between them regarding the nature of the Funds or Avtar's intentions in advancing them.
- [40] Contrary to other aspects of his evidence, Avtar was clear and consistent throughout his testimony that he did not tell Harvinder or Ms. Little that he considered the Funds to be an equity investment in whatever property they eventually purchased.
- [41] On May 8, 2010, the defendants signed a contract of purchase and sale for the Grand Boulevard Property for \$1,300,000. Mr. Wronski subsequently confirmed that the defendants qualified for a mortgage of \$320,000 with Scotiabank to purchase the Grand Boulevard Property.
- [42] The defendants' purchase of Grand Boulevard Property closed on June 18, 2010. The defendants are the only two owners listed on title to the Grand Boulevard Property.
- [43] The Funds were used towards the purchase price, alongside the defendants' savings and a mortgage from Scotiabank in the amount of \$120,000. The defendants also obtained an additional \$200,000 line of credit from Scotiabank. Mr. Jaffer assisted the defendants with the transaction, and Harvinder provided him with a copy of the Scotiabank Gift Letter.
- [44] In anticipation of taking possession of the Grand Boulevard Property, the defendants moved out of their rental property in Vancouver at the end of May 2010. They lived with Harvinder's parents from the beginning of June until they took possession of the Grand Boulevard Property on June 17, 2010.

Events Post-Separation

- [45] The defendants separated on December 19, 2018, and Harvinder vacated the Grand Boulevard Property.
- [46] The Funds were not discussed between the defendants until nearly a year later. In November 2019, Harvinder and Ms. Little had a discussion outside the Grand Boulevard Property. Harvinder testified that he told Ms. Little that they would need to return the loan from his father. It does not appear that anything came of this discussion until July 2020.
- [47] Towards the end of July 2020, Harvinder told Avtar the defendants were listing the Grand Boulevard Property for sale. In response, Avtar told Harvinder he wanted the Funds back and was going to take legal action in that respect.

- [48] It is undisputed that Avtar did not advise the defendants that he considered the Funds to be an investment or a loan at any point in time from when he advanced the Funds on April 6, 2010 to July 2020, when he learned the Grand Boulevard Property was going to be listed for sale and commenced this action.

Credibility Findings

- [49] Each of the parties takes a different position regarding the nature of the Funds: Avtar says they were an investment, Harvinder says they were a loan, and Ms. Little says they were a gift. As there is little by way of contemporaneous documentation, the parties' credibility is central to a determination of the issues before the court.
- [50] My credibility assessment is guided by the approach set out in *Bradshaw v. Stenner*, 2010 BCSC 1398 at paras. 186-187, *aff'd* 2012 BCCA 296, leave to appeal to SCC *ref'd*, 35006 (7 March 2013), and *Faryna v. Chorny*, 2 D.L.R. 354 at 357, 1951 CanLII 252 (B.C.C.A.). As the Court said in *Bradshaw*:
- [186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Faryna v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) [*Faryna*]; *R. v. S.(R.D.)*, [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Faryna* at para. 356).
- [51] Additional factors that may be considered when assessing credibility include whether a witness' explanation defies logic or common sense, or if a witness is evasive, longwinded, or argumentative in their responses: *Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd.*, 2019 BCSC 739 at para. 92 [*Youyi*].
- [52] I am also mindful that credibility and reliability are separate but related concepts, with credibility pertaining to a witness' veracity, and reliability to the accuracy of their testimony: *Ford v. Lin*, 2022 BCCA 179 at para. 104; *Equustek Solutions Inc. v. Jack*, 2020 BCSC 793 at para. 109, citing *R. v. H.C.*, 2009 ONCA 56 at para. 41. Significant frailties in a witness' evidence--such as inconsistencies between their testimony and contemporaneous documentation or inconsistencies in and contradictory explanations of key issues--may affect both credibility and reliability: see e.g. *Chao Yin Canada Group Inc. v. Xenova*

Property Development Ltd., 2021 BCSC 1445 at paras. 53-55, appeal dismissed as abandoned, 2023 BCCA 39.

- [53] Finally, credibility and reliability are not all or nothing propositions; I may believe all, part, or none of a witness' evidence and can attach different weight to different parts of that evidence: *Radacina v. Acquino*, 2020 BCSC 1143 at para. 96, citing *R. v. R. (D.)*, [1996] 2 S.C.R. 291 at para. 93, 1996 CanLII 207; *R. v. Howe*, 192 C.C.C. (3d) 480 at para. 44, 2005 CanLII 253 (Ont. C.A.).
- [54] Considering the evidence as a whole and applying the factors set out in *Bradshaw*, *Faryna* and *Youyi*, I find that while none of the parties attempted to deliberately mislead the Court or be dishonest in their evidence, they each, to varying degrees, attempted to shape their evidence in a manner most favourable to their position. Generally speaking, the parties tended to have detailed recollection of discussions or facts which were supportive of their positions, but their recollection of matters that may be construed as less favourable to or inconsistent with their positions, was less robust.

Avtar Johal

- [55] For the most part, Avtar testified in a measured and straightforward manner. He conceded points where appropriate, including that he never discussed the Funds with Ms. Little, and never expressly indicated to either her or Harvinder that he considered the Funds to be an equity investment in the Grand Boulevard Property.
- [56] That being said, Avtar's recollection of certain key events was selective and lacking in detail, especially when beneficial to his position in the litigation. By way of but one example, he could not recall how much profit he and Harvinder made on Ethical Ventures' real estate development projects. Harvinder's investments in Ethical Ventures were financed by interest-free loans from Avtar, which allowed Harvinder to share in the profits from those developments. In such circumstances, Avtar's inability to recall the amount of profits realized from Ethical Ventures appears to be an attempt to minimize the extent to which he had assisted Harvinder financially prior to, and contemporaneously with, the time frame in which the Funds were advanced.
- [57] Avtar was also at times evasive, glib and argumentative when pressed on cross-examination by counsel for Ms. Little. This was not the case when he was cross-examined by counsel for Harvinder.
- [58] Of greater concern, however, are the significant inconsistencies in Avtar's evidence arising from the differences between the evidence he gave on discovery in August 2021 and his testimony at trial. These inconsistencies arose in respect of two material details going to the core of his claim: (a) the initial discussion he had in early 2010 about providing financial assistance to the defendants; and (b) whether the Funds were advanced as an equity investment or a loan.

- [59] First, when examined for discovery in August 2021, Avtar disavowed any intention to advance the Funds as a loan. He was adamant in his evidence that he intended to make an equity investment in the Grand Boulevard Property, and the allegation in his pleadings that the Funds were advanced as a loan was a mistake and should not have been pleaded. Notably, Avtar's examination for discovery was conducted prior to Harvinder having filed his response to civil claim.
- [60] Harvinder's response to civil claim was filed in October 2021 and pleaded that the Funds were a loan. Thereafter, Avtar's evidence changed. His testimony at trial was that while he still intended to make an equity investment when he advanced the Funds, he considered all equity investments to be loans and all loans to be equity investments.
- [61] Second, Avtar testified on discovery that the full extent of the discussion between him and Harvinder when Harvinder asked for assistance in purchasing a home was that Harvinder said "Dad, we need help with our - our mortgage, with our down payment; could you help?" (emphasis added). When asked how much Harvinder said they needed, Avtar testified that Harvinder said \$500,000 and "that was the discussion". Avtar's evidence at trial about this conversation was different. He testified at trial that he had a clear recollection of Harvinder asking for a loan of \$500,000, stating that Harvinder said "Dad, can you loan us this money?" (emphasis added). Avtar also added additional detail, testifying that he said "ok" in response to Harvinder's request.
- [62] The inconsistencies in Avtar's evidence on these two key points--his initial discussion with Harvinder and his intentions when he advanced the Funds--renders it difficult to accept and I reject it. In my view, the changes in Avtar's evidence amounts to a self-serving attempt to harmonize his evidence and position in the litigation with Harvinder's, in an attempt to defeat Ms. Little's assertion that the Funds were advanced as a gift.
- [63] By consequence, I find that other than where it runs contrary to his or Harvinder's interests, I must treat Avtar's evidence cautiously. This is especially so in the absence of corroborative documentary or other independent evidence, which is predominantly the case on the material points in issue here.

Harvinder Johal

- [64] Harvinder presented as a careful witness, though his evidence was at times sparse and he was often unable to recall key dates or discussions. In this regard, his recollection was more limited than would be expected simply on account of the passage of time, particularly when contrasted with his ability to recall some discussions that assisted his position in the litigation with greater specificity.

- [65] For example, Harvinder could not recall when he created certain key documents or the date, or even month, when he asked Avtar for the Funds. He also could not recall whether Avtar attended the March 30, 2010 meeting with Mr. Jaffer. Harvinder also had difficulty recalling the context and contents of emails he exchanged with Mr. Wronski.
- [66] Harvinder's inability to recall when he asked Avtar for the Funds, other than to say it occurred sometime in late 2009 or early 2010, is particularly troubling. I find his testimony that this discussion could have occurred in 2009 to be an attempt to align the timing of that discussion to be contemporaneous with documents Harvinder relies on in support of his position that the Funds were advanced as a loan. These documents include a spreadsheet he created in the fall of 2009 and email correspondence with Mr. Wronski from October 2009. I reject Harvinder's evidence as to the timing of his request for the Funds and prefer that of Avtar and Ms. Little, both of whom testified that discussion took place in February or March 2010.
- [67] There were also significant internal inconsistencies in Harvinder's evidence, and some of the key details of the alleged incidents appear to have changed between his examination for discovery and evidence at trial. In particular, Harvinder's evidence at trial that he specifically asked Avtar for a loan was inconsistent with his evidence on discovery, where he testified that he recalled telling Avtar that he and Ms. Little "needed his help to purchase a home". At trial, Harvinder denied that Avtar offered him and Ms. Little the Funds as a gift because they were his only son and daughter-in-law and they would likely have children. Yet on discovery, he agreed that this "sounded familiar". This is in my view a significant and material inconsistency in his evidence that significantly undermines the weight that I can give to his testimony as a whole.
- [68] In the result, I reject Harvinder's evidence as to the timing of his discussion with Avtar where he requested help in purchasing a home, and his denial of Avtar having offered the Funds. I also conclude that I must treat Harvinder's evidence with caution generally, other than where it is consistent with contemporaneous documentation, or Ms. Little's evidence.

Susan Little

- [69] Ms. Little testified in a calm and straightforward manner. Like Avtar and Harvinder, she had difficulty recalling details at times. In particular, she struggled to recall the specifics of the defendants' financial situation in the months prior to their eventual purchase of the Grand Boulevard Property and the details of various offers for purchase and sale that she and Harvinder made.
- [70] Harvinder points to these inconsistencies and suggests that they diminish Ms. Little's credibility. I disagree. While there were inconsistencies in her evidence, I do not find them to be on material points. For example, the precise amount of funds available for a home purchase, whether the defendants were initially approved for \$420,000 or \$440,000 in mortgage financing, and whether they could have purchased a particular property without

mortgage financing do not amount to significant inconsistencies on material points. Moreover, the inconsistencies in Ms. Little's evidence on these points may also result from Harvinder having been primarily responsible for dealing with such matters and corresponding with Mr. Wronski.

- [71] Ms. Little gave evidence that the parties all signed the Dominion Gift Letter at Mr. Jaffer's office, and Avtar received legal advice from Mr. Jaffer about the letter. She maintained this position in the face of email correspondence suggesting that Avtar and Harvinder potentially signed that letter at Avtar's home. Ms. Little's contention is therefore difficult to reconcile with the preponderance of the evidence. However, two copies of the Dominion Gift Letter were adduced into evidence, one of which was only signed by Avtar. It is thus possible that all three parties signed a copy at Mr. Jaffer's office, while Avtar alone signed a second copy at his home. It is also notable that Mr. Jaffer did not testify, despite the conflicts in the parties' evidence about what transpired at their March 30, 2010 meeting with him. On balance, I do not construe the inconsistencies between Ms. Little's evidence and Avtar and Harvinder's as amounting to an intentional attempt to mislead or deceive the court so as to undermine her evidence on other matters.
- [72] More importantly, Ms. Little was adamant in her evidence that Avtar offered the Funds to the defendants as a gift. Her evidence in this respect was unshaken on cross-examination and I prefer it to Harvinder and Avtar's. Harvinder asserts that Ms. Little's evidence on this point ought to be rejected as it is contradicted by three documents which he says specifically reference borrowing funds: the Spreadsheet, email correspondence between Harvinder and Mr. Wronski between October 13 to November 23, 2009, and an April 6, 2010 email from Mr. Wronski. I address this submission in greater detail below, but for present purposes, it suffices to say that it does not change my findings regarding Ms. Little's credibility.

Issues in Dispute

- [73] The overarching issue to be determined in this action is whether the plaintiffs are entitled to an equity interest in the Grand Boulevard Property. To succeed in this respect, they will need to rebut the statutory presumption of indefeasible title. This can be done by operation of a resulting trust in favour of the plaintiffs.
- [74] Whether a resulting trust arises is dictated by Avtar's intention at the time he advanced the Funds to Harvinder. The first issue to be determined is thus whether Avtar intended to advance the Funds as an equity investment in the Grand Boulevard Property, as a loan, or as a gift.
- [75] The plaintiffs also advance a claim in unjust enrichment. A secondary issue thus arises as to whether the defendants have been unjustly enriched at the plaintiffs' expense by having received the Funds. There is no dispute as to the nature of the enrichment or corresponding deprivation. This issue therefore turns on whether there is juristic reason for the defendants' enrichment, either by way of donative intent, or contractual agreement.

Legal Principles

Presumption of Indefeasible Title

- [76] Section 23 of the Land Title Act, R.S.B.C. 1996, c. 250, provides that "An indefeasible title, as long as it remains in force and uncanceled, is conclusive evidence at law and in equity, as against the Crown and all other persons, that the person named in the title as registered owner is indefeasibly entitled to an estate in fee simple to the land described in the indefeasible title", subject to certain exceptions, none of which apply here.
- [77] Harvinder and Ms. Little are registered on title to the Grand Boulevard Property. By consequence, a statutory presumption arises pursuant to s. 23 of the Land Title Act that they are the owners of the Grand Boulevard Property.

The Presumption of Resulting Trust

- [78] The presumption of indefeasible title can be rebutted by the operation of a resulting trust: *Suen v. Suen*, 2013 BCCA 313 at para. 34. The presumption of resulting trust arises in circumstances where a transfer from a parent to an independent adult child is made for no consideration: *Pecore v. Pecore*, 2007 SCC 17 at paras. 35-36. In such circumstances, the law presumes that the grantor intended to create a trust, rather than make a gift: *Kerr v. Baranow*, 2011 SCC 10 at para. 19.
- [79] A gratuitous transfer is fundamental to the presumption of a resulting trust. In *Kerr*, the Court described the circumstances in which a resulting trust may arise as follows:
- [17] Resulting trusts arising from gratuitous transfers are the ones relevant to domestic situations. The traditional view was they arose in two types of situations: the gratuitous transfer of property from one partner to the other, and the joint contribution by two partners to the acquisition of property, title to which is in the name of only one of them. In either case, the transfer is gratuitous, in the first case because there was no consideration for the transfer of the property, and in the second case because there was no consideration for the contribution to the acquisition of the property.
- [80] It is undisputed that Avtar advanced the Funds to Harvinder for no consideration and that the Funds were used to purchase the Grand Boulevard Property. As such, a presumption of a resulting trust arises.
- [81] Once the presumption of resulting trust is operative, the onus falls on the transferee to rebut the presumption by demonstrating on a balance of probabilities that a gift was intended by the transferor: *Pecore* at para. 24; *Bergen v. Bergen*, 2013 BCCA 492 at para. 5; see also *Beaverstock v. Beaverstock*, 2011 BCCA 413 at para. 9. As the Court of Appeal said in *Suen*:

- [38] The onus of proof is on the party seeking to rebut the presumption of resulting trust, i.e., the transferee. In *Pecore*, the Supreme Court of Canada confirmed that when a transfer is challenged (as having been made for no consideration), "the onus is placed on the transferee to demonstrate that a gift was intended: see *Waters, Gillen and Smith, Waters' Law of Trusts* at p. 375, [Waters] and *E.E. Gillese and M. Milczynski, The Law of Trusts* (2nd ed. 2005), at p. 110. This is so because equity presumes bargains, not gifts" (para 24).
- [82] Where there has been a gratuitous transfer, the governing consideration is the actual intention of the transferor at the time of transfer: *Kerr* at para. 18, citing *Pecore* at paras. 43-44. Thus, whether the Funds were transferred as a loan or a gift depends on Avtar's actual intentions when he advanced the Funds. The presumption will determine the result only when there is insufficient evidence to rebut it on a balance of probabilities: *Pecore*, at paras. 43-44; *Lee v. Chau*, 2021 BCSC 70 at para. 58; *Bergen* at para. 5.

Issue #1: Were the Funds Advanced as an Investment, Loan or Gift?

Were the Funds Advanced as an Equity Investment in the Grand Boulevard Property?

- [83] Avtar asserts that the presumption of indefeasible title is rebutted by a resulting trust having arisen on the basis of a purchase in the name of another. He says that the Funds were advanced to purchase an equity interest in the Grand Boulevard Property. To succeed in this respect, Avtar must establish that: (a) he was the one who provided the purchase money; and (b) he was putting up the purchase money as a purchaser himself, not as a loan: *Swanstrom v. Wuest*, 2018 BCSC 2299 at paras. 43-45.
- [84] It is undisputed that 672047 provided the Funds and that they were used towards the purchase of the Grand Boulevard Property. However, contrary to the plaintiffs' closing submissions, this fact alone is insufficient to meet their burden. The plaintiffs must also show that the Funds were advanced by 672047 as purchaser, namely, to obtain an equity interest in the Grand Boulevard Property. The evidence before me does not support such a finding.
- [85] I do not accept Avtar's evidence that he advanced the Funds to Harvinder with the intention of obtaining an equity interest in the Grand Boulevard Property. Most notably, at no point prior to July 2020--after the parties had been separated for over a year and were contemplating listing the Grand Boulevard Property for sale--did Avtar ever tell Harvinder or Ms. Little that he intended to obtain an equity interest in exchange for the Funds. Avtar's evidence to this effect was, clear, consistent and unwavering.
- [86] Nor is there any evidence whatsoever that he ever told anyone else--i.e. his wife, Mr. Jaffer, or Scotiabank--that he was advancing the Funds on behalf of 672047 to purchase an equity interest in the Grand Boulevard Property. This is a particularly consequential gap in the evidence given the contemporaneous and express representations to the opposite effect in the Scotiabank Gift Letter.

- [87] Considered within this constellation of facts, Avtar's assertion that in his mind, the Funds were an investment because they came out of his investment company's bank account, is unpersuasive. Avtar's corresponding contention that the defendants should have known that the Funds were an investment simply because they were drawn on a bank draft that came from 672047's account is similarly unpersuasive. This is particularly the case as it relates to Ms. Little, as there is no evidence that she ever saw the bank draft drawn on 672047's account, or that she and Harvinder ever discussed the Funds having come from 672047.
- [88] Likewise, Avtar's evidence that he considered all loans to be investments is not compelling and, notably, inconsistent with his past practice in loaning funds to Harvinder and 682822. Despite having made multiple loans to Harvinder and 682822 to permit them to invest in Ethical Ventures, there is no evidence that Avtar ever sought a portion of Harvinder's share in Ethical Ventures' profits. In my view, such would have been the logical consequence if I accepted Avtar's evidence that all loans were investments.
- [89] Moreover, Avtar's assertion that he intended to acquire an equity interest in the Grand Boulevard Property is inconsistent with the preponderance of the evidence before me and his conduct, namely that he:
- a) advanced the Funds to Harvinder in April 2010, before the Grand Boulevard Property was even known to the defendants and before an offer of purchase and sale had even been made, let alone accepted;
 - b) did not visit the Grand Boulevard Property until sometime after the defendants took possession in June 2010; and
 - c) did not share in any of the expenses associated with the Grand Boulevard Property, such as property taxes or maintenance costs.
- [90] In the result, I conclude that the plaintiffs have not established a resulting trust on the basis that the Grand Boulevard Property was a purchase in the name of another. As such, they have not rebutted the presumption of indefeasible title on this basis.

Were the Funds Advanced as a Loan or Gift?

- [91] The plaintiffs also assert that a resulting trust arises because the Funds were advanced by way of gratuitous transfer. As the Supreme Court of Canada noted in *Kerr* at para. 19, where a gratuitous transfer has been made, the law generally presumes that the grantor intended to create a trust, rather than to make a gift. Since the Funds were transferred gratuitously, the onus shifts to the transferee to prove that the Funds were a gift: *Pecore* at para. 24; *Suen* at para. 38.

[92] In order for a gift to be legal and binding, there must be a legal transfer of the property from the owner to the beneficiary and an intention by the owner to transfer the property as an outright gift: Lee at para. 56, citing *Stade Estate (Re)*, 2017 BCSC 2354. The key inquiry is to determine the transferor's intent at the time of the actual transfer; only the transferor's intention is relevant: *Pecore* at paras. 56-59; *Nishi v. Rascal Trucking Ltd.*, 2013 SCC 33 at paras. 37 and 41.

[93] The determination of whether funds were advanced as a loan or a gift turns on the unique facts of each case and the court must weigh all of the evidence in determining the intent of the person who advanced the funds: *Savost'Yanova v. Chui*, 2015 BCSC 516 at paras. 76-77. The court must consider the evidentiary factors set out in *Locke v. Locke*, 2000 BCSC 1300 at para. 20, *Chang v. Xia*, 2015 BCSC 1994 at para. 55, and *Beaverstock* at paras. 10-11. Those factors require consideration of whether:

- a) there were any contemporaneous documents evidencing a loan;
- b) the manner for repayment is specified;
- c) there is security held for the loan;
- d) there are advances to one child and not others, or advances of unequal amounts to various children;
- e) there has been any demand for repayment;
- f) there has been any partial repayment; and
- g) there was any expectation, or likelihood of repayment.

[94] A valid gift is made when the evidence demonstrates that, at the time of transfer, the transferor intended the transferee to hold the beneficial interest in the property being purchased: *Nishi* at para. 37. It is the intention of the transferor at the time of transfer that is determinative, as noted in *Nishi*:

[41] Evidence that arises subsequent to a gratuitous transfer can be admissible to show the true intention of the transferor (*Pecore*, at para. 59). However, it is the intention of the transferor at the time of transfer that is determinative. The difficulty with subsequent evidence is that it may well be self-serving or the product of a change in intention on the part of the transferor (*Pecore*, at para. 59).

[Emphasis in original.]

[95] After-the-fact evidence as to intention is thus admissible, but is to be treated with considerable caution: *Chang* at para. 58; *Nishi* at paras. 2 and 41. Ultimately, the determination of whether funds were advanced as a loan or a gift depends on the unique facts of each case: *Savost'Yanova* at para. 76.

(a) Contemporaneous Documents Evidencing a Loan

- [96] There is no contemporaneous documentation evidencing Avtar's intention to advance the Funds as a loan. Indeed, prior to Harvinder filing his response to civil claim in which he asserts that the Funds were advanced as a loan, Avtar strenuously disclaimed any intention to loan the Funds, to the extent that he testified on discovery that the alternative plea to that effect contained in his notice of civil claim was a mistake. It was only after Harvinder filed his response to civil claim, in which he took the position that the Funds were advanced as a loan, that Avtar's evidence changed and he testified at trial that he considered all investments to be loans.
- [97] Harvinder points to three documents that he asserts are evidence that the Funds being advanced were a loan rather than a gift:
- a) the Spreadsheet created by Harvinder in which the Funds were described as both a "loan from dad" and a "gift";
 - b) email correspondence between Harvinder and Mr. Wronski in October and November 2009, in which Harvinder writes that he and Ms. Little were "discussing borrowing funds" from Avtar; and
 - c) the April 6, 2010 email from Mr. Wronski to the defendants which indicated that the Funds were repayable to the "client" as a loan from Harvinder.
- [98] In my view, none of these documents constitute contemporaneous evidence that Avtar advanced the Funds as a loan as opposed to a gift. First, it is Avtar's intention that is relevant to this analysis, not Harvinder's. At best, these documents speak to Harvinder's intention; none of them evidence any intention on the part of Avtar to advance the Funds as a loan.
- [99] Regardless, both the Spreadsheet and the 2009 email correspondence with Mr. Wronski predate the March 2010 conversation in which Harvinder asked Avtar for the Funds. These documents thus corroborate Harvinder's evidence that he intended to and did in fact ask Avtar for financial assistance. However, they say nothing of Avtar's intention when he provided the Funds to Harvinder in April 2010. Moreover, neither document clearly denotes that the Funds were advanced as a loan: the Spreadsheet refers to them as both a gift and a loan, and the email correspondence is entirely unclear in that respect.
- [100] With respect to the Spreadsheet in particular, Ms. Little confirmed that she provided information about the money available from her accounts to Harvinder, but did not know why the Funds were described therein as both a loan and a gift. Harvinder testified that he intended to show the second table where the Funds are described as a gift to the banks. However, his evidence in this regard lacked specificity as to the context in which he would have been required to do so and notably, there is no evidence that he ever actually did so. Nor would there have been any apparent need to show the Spreadsheet to a lender given that the defendants had already qualified for a \$410,000 mortgage. In face of the other available documentation, including in particular the gift letters discussed below, I do not accept Harvinder's explanation that the Spreadsheet was intended to be shown to lenders

as the reason for the Funds being referred to as a gift.

- [101] I also place little weight on how Harvinder described the Funds in the Spreadsheet because Harvinder could not recall when he created it, other than to say it was sometime in late 2009. While that may have been the case, it must have been updated at some later point in time after the March 2010 discussion between Harvinder and Avtar, as it includes the Funds and also refers to the defendants as having over \$1.5 million available. The Spreadsheet also appears to have been updated with reference to a particular property. It notes a "House List Amount" of \$1,495,000 and "House Offer Amount" of \$1,530,000, which further suggest that the version of the Spreadsheet tendered into evidence post-dated March 2010.
- [102] Further, in prior instances when Avtar loaned funds to Harvinder or 682822 for the purpose of investing in Ethical Ventures, he expressly marked the purpose of the advance on the transfer instrument. For example, Avtar marked "loan" on the associated cheque or bank draft. The bank draft for the Funds contained no markings whatsoever. Notably, and unlike his past practice, Avtar did not write "loan" on the bank draft for the Funds. In the absence of any other documentation evidencing a loan, such a notation would have been helpful evidence of Avtar's intention at the time the Funds were advanced. The obvious implication of Avtar's failure to write "loan" on the cheque advancing the Funds is that the Funds were not a loan. I do not find Avtar's attempt to draw a distinction between cheques drawn on his personal account and those drawn on 672047's account compelling as a means of negating this implication.
- [103] Rather, Avtar admitted on discovery that prior to this action being commenced, the only information Ms. Little would have had about the nature of the Funds was that contained in the gift letters. He also admitted that he never told either of the defendants that his intentions in advancing the Funds were other than as set out in the Dominion and Scotiabank Gift Letters.
- [104] I am cognizant that the existence of a gift letter prepared by a parent to assist a child in obtaining mortgage financing is not determinative of the parent's intent in advancing funds; it does not necessarily negate the intention to grant a loan: see e.g. *Weinhaupl v. Paracy*, 2017 BCSC 1662 at paras. 63-65; see also *Savost'Yanova*, at paras. 38-39. However, in the present circumstances, I find that since the Funds were provided contemporaneously with the Scotiabank Gift Letter and, in the absence of contemporaneous documentation or discussions to the contrary, Avtar's silence as to the nature of the Funds is insufficient to negate the clear language of the letter.
- [105] I do not accept Harvinder's submission that the present facts are sufficiently similar to those in *Savost'Yanova*, to mandate the same result here. In that case, the Court concluded that funds advanced for the purchase of a matrimonial home were a loan despite a gift letter having been signed. However, there the parent maintained a ledger tracking all funds advanced to and repaid by his children. The funds used for the home purchase had been entered into this ledger and clearly marked as a loan. The court characterized this

arrangement as "the Bank of Dad": Savost'Yanova at para. 85.

[106] Harvinder points to his and Avtar's evidence that Avtar kept a spreadsheet tracking funds he spent over the years on Harvinder's behalf, among other similarities, and says that the same result as in Savost'Yanova ought to follow. I disagree. Avtar and Harvinder's evidence about Avtar having kept a spreadsheet was sparse and lacking in detail. More importantly, no such spreadsheet was adduced into evidence, and neither Avtar nor Harvinder testified that the Funds were noted in the spreadsheet, if it in fact existed. Savost'Yanova is thus distinguishable on this basis, among others, bearing in mind that the determination of whether funds were advanced as a loan or a gift turns on the unique facts of each case: Savost'Yanova at para. 76.

[107] Finally, it is common ground that the defendants did not have sufficient funds to purchase the type of home they wanted without assistance from Avtar. This fact speaks to the defendants' need for financial assistance. It is not determinative of the material point in issue, namely Avtar's intention in advancing the Funds.

(b) Manner for Repayment

[108] There is no evidence that Avtar specified the manner of how the Funds were to be repaid nor that the same was even discussed between Avtar and Harvinder. Further and as in *M.F.R. v. B.P.R.*, 2010 BCSC 1063 and *Kuo v. Chu*, 2008 BCSC 504, aff'd 2009 BCCA 405, terms of repayment were never discussed with Ms. Little.

[109] Harvinder suggests that there was a "historical understanding" between him and Avtar that funds advanced by Avtar to Harvinder would be repaid when Harvinder had sufficient funds to repay the loan. Avtar and Harvinder's past practices with respect to business loans do not, in my view, apply to the advancement of the Funds, which were made for personal, not business, purposes. Contrary to prior loans, the Funds were also not marked as such when advanced.

[110] Moreover, neither Harvinder or Avtar testified to having discussed the manner of repayment for the Funds. Indeed, it was not until November 2019, that Harvinder first told Ms. Little that they would need to be repaid. It is difficult to accept that had the Funds been advanced as a loan, Avtar and Harvinder would not have discussed the manner of repayment. It is similarly hard to accept that the defendants would not have discussed the same at any point during their marriage or in the immediate aftermath of separation.

[111] In my view, that Harvinder and Avtar did not raise the issue of repayment with Ms. Little until November 2019 and July 2020, respectively, is further indication that the Funds were advanced as a gift and treated as such by the parties at all material times during the course of the marriage.

(c) Security Held for the Loan

- [112] The defendants did not give security for the alleged loan of the Funds. In this respect, it is notable that despite taking the position that he advanced the Funds as an equity investment in the Grand Boulevard Property, and having access to legal advice from Mr. Jaffer, Avtar took no steps to have himself listed on title to the Grand Boulevard Property or otherwise obtain any security whatsoever for his alleged investment.
- (d) Advances to One Child but Not Others or Unequal Advances
- [113] This factor does not assist in the present case. Harvinder is Avtar's only son and surviving child, and the sole beneficiary of his parents' estate under their respective wills following the death of his sister in 2007.
- (e) Demand for Repayment
- [114] Avtar did not demand repayment of the Funds at any point in time from April 2010 to July 2020, when he learned that the Grand Boulevard Property would be listed for sale and commenced this action. That Avtar did not demand repayment weighs against a finding that the Funds were a loan.
- [115] In this respect, I reject Harvinder's submission that it was an implied term of the alleged oral loan agreement between him and Avtar that the Funds would be repaid when Harvinder had sufficient funds to do so. As discussed further below, no such loan agreement is established on the evidence before me. Regardless, Harvinder had access to funds by way of profits from his investments in Ethical Ventures from which he could have at least partially repaid the Funds at various points in time prior the defendants' separation. I do not accept that because the Ethical Ventures investment was made through 682822, it meant that those funds were not available to repay the Funds had Harvinder in fact been obligated to do so.
- (f) Partial Repayment
- [116] It is undisputed that no partial repayments were ever made. As noted, that is despite there being times prior to separation when Harvinder potentially had the ability to do so on account of having received profits from his investment in Ethical Ventures.
- (g) Expectation or Likelihood of Repayment
- [117] There is no evidence that Avtar had an expectation of repayment at the time the Funds were advanced.
- [118] Harvinder's contrary position is predicated on two assertions: that he always repaid funds advanced to him by his father, and that he and Avtar entered into an oral loan agreement when he asked to borrow the Funds to which Avtar agreed by saying "ok" in response to his request.

- [119] First, I accept Harvinder's evidence that he repaid Avtar for past contributions towards his education and a vehicle purchase and likewise felt obligated to repay the Funds. However, his sense of obligation to repay the Funds only seems to have crystallized post-separation. Considering the whole of the circumstances, I find that Harvinder's intention to repay the Funds is best characterized as a moral claim on his conscience, not terms of repayment evidencing a debt: see e.g. *Krupa v. Krupa*, 2008 BCSC 414 at para. 81.
- [120] Second, the evidence is insufficient to establish that Avtar and Harvinder entered into a loan agreement in respect of the Funds. Avtar was steadfast in his evidence on discovery that he did not intend the Funds to be a loan. I have also rejected his self-serving evidence given at trial to the effect that he considered all loans to be investments and that he said "ok" in response to Harvinder's request for financial assistance. Harvinder's assertion that a loan agreement was formed between him and Avtar is also inconsistent with Avtar's evidence on discovery that he did not discuss the nature of the Funds with anyone, including Harvinder.

Conclusion on whether the Funds were Advanced as a Loan or Gift

- [121] Considering the evidence as a whole in view of the factors outlined above, I find that Avtar's intention at the time he advanced the Funds to Harvinder was to make a gift and not a loan. This conclusion is amply supported in the evidence before me and is consistent with Avtar's own evidence that he did not intend to loan the Funds to the defendants. It is also consistent with the weight of jurisprudence applying the Locke factors in similar factual contexts to those in issue here, including *Krupa*, *M.F.R.*, and *T.S. v. M.S.*, 2011 BCSC 1715.
- [122] Put differently, the evidence I have accepted does not support Harvinder's contention that Avtar intended to advance the Funds as a loan. Even Avtar does not say that this was the case, and his belated attempt to reconcile his evidence at trial with Harvinder's position was neither credible nor compelling.
- [123] In the result, I conclude that Avtar intended to advance the Funds to the defendants as a gift and by consequence, Ms. Little has rebutted the presumption of resulting trust.

Issue #2: Have the Defendants Been Unjustly Enriched?

- [124] The plaintiffs also advance a claim in unjust enrichment against the defendants. They assert that the defendants were enriched by receipt of the Funds and their use thereof to purchase the Grand Boulevard Property, and that "Avtar was deprived of the use of his \$500,000 for the last 13 years" and that "it would be unfair for Avtar to walk away with just \$500,000" as it was 672047's investment.
- [125] The test to establish an equitable claim for unjust enrichment is uncontested. The plaintiffs must prove: (a) that the defendants received a benefit; (b) the plaintiffs suffered a corresponding deprivation; and (c) there is an absence of juristic reason for the defendants to retain the benefit: *Lee* at para. 41, citing *Moore v. Sweet*, 2018 SCC 52 at para. 37.

- [126] The benefit to the defendants of having received the Funds is clear on the evidence, as is the corresponding deprivation to 672047. The plaintiffs' claim in unjust enrichment thus falls to be determined at the juristic reason step of the analysis. This requires the plaintiffs to show that no juristic reason from an established category exists to deny recovery. The established categories that can constitute juristic reasons include a contract, a disposition of law, a donative intent, and other valid common law, equitable or statutory obligations: *Garland v. Consumers' Gas Co.*, 2004 SCC 25 at para. 44.
- [127] Donative intent is recognized as an established category of juristic reason: *Garland* at para. 44, citing *Peter v. Beblow*, [1993] 3 S.C.R. 980 at 990-991, 1993 CanLII 126; see also *Falsetto v. Falsetto et al.*, 2022 ONSC 3701 at para. 190, *aff'd* 2023 ONCA 469; *Jasmins v. Morris*, 2016 ONSC 800. The key question in determining whether there was a donative intent is the same as a determination of a gift at law, "intentional giving to another without expectation of remuneration": *Peter* at 991-992.
- [128] A plaintiff will be denied recovery in circumstances where they confer a benefit on a defendant by way of a gift, since there is nothing unjust about a defendant retaining a gift that was made to them. As the Supreme Court of Canada noted in *Moore*:
- [57] The first stage requires the plaintiff to demonstrate that the defendant's retention of the benefit at the plaintiff's expense cannot be justified on the basis of any of the "established" categories of juristic reasons: a contract, a disposition of law, a donative intent, and other valid common law, equitable or statutory obligations (*Garland*, at para. 44; *Kerr*, at para. 41). If any of these categories applies, the analysis ends; the plaintiff's claim must fail because the defendant will be justified in retaining the disputed benefit. For example, a plaintiff will be denied recovery in circumstances where he or she conferred a benefit on a defendant by way of gift, since there is nothing unjust about a defendant retaining a gift of money that was made to him or her by (and that resulted in the corresponding deprivation of) the plaintiff. In this way, these established categories limit the subjectivity and discretion inherent in the unjust enrichment analysis and help to delineate the boundaries of this cause of action (*Garland*, at para. 43).
- [Emphasis added]
- [129] Accordingly, my conclusion that the Funds were advanced as a gift is also determinative of the plaintiffs' unjust enrichment claim. Avtar's donative intent constitutes juristic reason for the defendants to retain the benefit of the Funds.
- [130] For completeness, I reject Harvinder's contention that juristic reason exists by way of an oral agreement between him and Avtar whereby he asked to borrow the Funds and Avtar agreed. No such oral agreement is established on the evidence before me. Avtar was steadfast in his evidence on discovery that he did not intend the Funds to be a loan, and I have rejected his self-serving evidence that he considered all loans to be investments.

[131] In the result, Avtar's donative intent in advancing the Funds operates as juristic reason to deny recovery such that the plaintiffs' claim in unjust enrichment has not been established on the evidence before me.

Conclusion

[132] Avtar intended to advance the Funds as a gift to the defendants. By consequence, the presumption of resulting trust has been rebutted and the plaintiffs have not in turn rebutted the presumption of indefeasible title. Avtar's donative intent in advancing the Funds constitutes juristic reason for the defendants' enrichment at 672047's expense.

[133] The plaintiffs' claim is dismissed. If the parties are unable to agree on costs, they have leave to request a further hearing before me within 60 days of the date of this judgment.

"Hughes J."

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