
CANADA / JUDGMENT

Bostrom v. Bigford

2019 BCSC 79

COURT

Supreme Court of British Columbia

DECIDED

24 January 2019

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2019 BCSC 79 Bostrom v. Bigford

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bostrom v. Bigford,

2019 BCSC 79

Date: 20190124

Docket: S173337

Registry: New Westminster

Between:

Gail Kathleen Bostrom

Plaintiff

And

Sean Taylor Bigford and

Sarah Jean Bigford

Defendants

Before: The Honourable Mr. Justice Jenkins

Reasons for Judgment

Counsel for the Plaintiff:

W.E. Neufeld

Counsel for the Defendants:

P. Loewen

Place and Date of Trial:

Chilliwack, B.C.

May 14 - 17, 2018

August 17, 2018

Place and Date of Judgment:

New Westminster, B.C.

January 24, 2019

Table of Contents

Factual Background. 3

Evidence on the Purchase of the Tylney Lane Home. 6

Gail Bostrom.. 7

Sarah Bigford. 12

Sean Bigford. 17

Howard Wiens. 18

Life at Tylney Lane. 19

Applicable Law.. 21

Preliminary Matters. 21

Presumption of Advancement between Parents and Adult Children. 21

"Gratuitous Transfer" Resulting Trusts. 22

Rebutting the Presumption of a Resulting Trust 24

Influences and Insufficient Legal Advice. 24

Determining the Value held on Resulting Trust 26

Application of the Law and Decision on Resulting Trust. 27

Conclusion. 32

Costs. 32

- [1] The plaintiff claims a vesting order granting her title to property located in Abbotsford on the basis of a resulting trust. The property in question ("Tylney Lane home") is the home of and is registered in the names of the defendants, Sarah Jean Bigford and Sean Tyler Bigford. They are a married couple. The plaintiff is the biological mother of the defendant, Sarah Bigford.
- [2] For ease of reference and not meaning any lack of respect for the parties, I will refer to them by their first names throughout these reasons.
- [3] In addition to her resulting trust claim, the plaintiff seeks the following: an accounting; a certificate of pending litigation against the property; claim in debt; and interest pursuant to the Court Order Interest Act, R.S.B.C. 1996, c. 79. The debt concerns various funds advanced by the plaintiff to the defendants. Specifically, the plaintiff asserts a claim against the defendants for the amount of \$35,000 representing a loan made for the purchase by Sean of a pickup truck. The defendants admit liability for that loan in that they have made no payments to Gail in repayment of the same.
- [4] The defendants submit that the circumstances under which the plaintiff transferred funds to enable the purchase of the Tylney Lane home, including the plaintiff's execution of a "gift letter", evidence the plaintiff's clear intention to make a gift to them.
- [5] Each of the three parties testified at trial. The fourth witness was Mr. Howard Wiens, who was the solicitor engaged by Gail for the sale of her previous home on Billy Brown Road in Fort Langely ("Billy Brown home"). He was also the solicitor responsible for the purchase of the Tylney Lane home. Mr. Wiens was called as a witness for the defence.

Factual Background

- [6] The plaintiff, Ms. Gail Bostrom, was married for many years to Mr. Ted Bostrom. During their marriage, they raised two children, Cole Bostrom and the defendant, now known as Sarah Bigford, since her marriage to the defendant, Sean Bigford.
- [7] During their lengthy marriage, Gail and Ted Bostrom bought, built and sold several homes in the Abbotsford area, facilitated in part by Ted owning a construction company. During their marriage, Gail had little involvement in the purchase and sale of properties, relying on Ted's experience to deal with the details of the purchase, sale and financing of the homes.
- [8] The plaintiff and Ted separated in or about 2008. Gail had worked periodically during the marriage and had participated in several volunteer organizations but primarily raised the two children, both of whom were adults by the time their parents separated.
- [9] For the past three years, Gail has resided in a basement suite in Abbotsford. Her only source of income is Canada Pension Plan, old age pension and funds from a small investment which total approximately \$1,900 per month.

- [10] At the time of the purchase of the Tylney Lane home in 2014, Ms. Bostrom was sixty-four years of age.
- [11] In 2011, Gail received a substantial financial settlement in the divorce proceedings which included an amount designated as lump sum spousal support. With a portion of the settlement, Gail purchased a home in Fort Langley: the Billy Brown home.
- [12] Based upon Sarah's testimony in particular, it is clear that her parents, Gail and Ted, both when they were together and afterwards, continued to be generous with gifts to their children. These included payment of expenditures for Sarah's horse competitions, wedding gifts and other gifts typical of parents of some means being able to share with and provide opportunities for their children.
- [13] Sarah is a certified dental assistant and worked in that profession between 2006 and 2013. After moving from the Billy Brown home, Sarah resided in a basement suite in Abbotsford, at first on her own and eventually with Sean. Sarah and Sean married in 2012.
- [14] In the spring of 2012, Sarah and Sean were considering the purchase of a townhouse located in a project in Fort Langley, known as the Waterleaf development. Sarah and Sean asked Gail for a loan to assist them in purchasing a unit in Waterleaf. The funds were to cover the deposit needed for the purchase. Gail provided an amount of \$24,000. When paying over the \$24,000, Gail signed a gift letter for \$12,000 of the deposit in which Gail confirmed \$12,000 was being provided as a "genuine gift from the donor and was non-repayable" (Exhibit 1). Sarah and Sean then entered into a purchase agreement and began to seek out financing for part of the purchase price. They found out they could not qualify for a mortgage because of Sean's poor credit rating. The failure to secure financing led to Sarah asking her father, Ted, to co-sign on a mortgage to the Royal Bank. Ted agreed.
- [15] The developer of the Waterleaf project was delayed in completing the project which resulted in extensions in the completion date. Eventually, Sarah and Sean signed off on the project and received a refund of the full amount of the deposit, i.e., \$24,000, from the developer in the spring of 2014. They did not repay those funds to Gail nor did they advise Gail that they had received the deposit funds back from the developer of the Waterleaf project. Sarah and Sean both testified at trial that the reason they did not disclose repayment of the deposit was that they had entered into a non-disclosure agreement with the developer, however, no evidence of such an agreement was produced by Sarah or Sean. Sarah admitted that the funds from return of the deposit were used to pay personal debt of Sarah and Sean.
- [16] The basement suite in which Sarah and Sean were living became uninhabitable due to mould and in late 2013. Sarah and Sean then moved into the Billy Brown home with Gail. Gail did not collect rent from Sarah and Sean while they lived with her at the Billy Brown home. The young couple intended to purchase their own residence and anticipated they would be able to save money for the purchase of a home if they did not have rent expenses. Gail testified Sarah and Sean agreed to pay for the cost of hydro and natural gas and would help with payment of the taxes in lieu of rent. Sarah and Sean eventually paid only a few

utility payments. Gail testified that she deferred payments so as to assist Sarah and Sean in raising funds for the purchase of a home. According to Gail, Sarah also stated to her that Sarah and Sean wanted to invest in a home and hopefully realize an increase in value which Sarah and Sean could apply towards a down payment on a home in another area, specifically Kelowna. In and about that time, Sean was employed as a herdsman in the dairy industry in the Fraser Valley and earned an income of up to \$70,000. The Bigfords resided in the Billy Brown home with Gail for approximately one year.

- [17] By May of 2014, Sarah and Sean again expressed interest in purchasing a home for them and their young son. Sarah was no longer working by that time as she had recently become a full-time mother.

Evidence on the Purchase of the Tylney Lane Home

- [18] The testimony of each of the parties regarding the purchase of the Tylney Lane home varies significantly.
- [19] Before proceeding to summarize the evidence of the parties, I state that where the testimony of Gail varies from that of the defendants, Sarah and Sean, I accept the evidence of Gail whom I found to be very honest, caring towards her family and straightforward in her evidence. She was also inexperienced in the process of conveyancing properties and was understandably most upset and frightened over the conduct of her daughter and son-in-law when she realized they had no financing, leaving her in a position where she had to use the majority of her remaining financial assets to purchase the Tylney Lane home. Gail had reason to be upset with her daughter and son-in-law once she learned that they were not able to secure mortgage funds which left Gail in a very difficult position. I will also set out why I generally do not accept the evidence of the defendants.
- [20] Observing Gail testify at trial, the Court observed a woman who wanted to assist her daughter and went to great lengths to do so. Although nervous and still upset over what happened to her as a result of the actions of Sean and Sarah, she is of sound mind and had been supportive of her children, only to become extremely disappointed with the eventual turn of events.

Gail Bostrom

- [21] In or about the time of the purchase of the Tylney Lane home, Gail was sixty-four years old, was not employed and earned nominal pension income. She had received a settlement of approximately \$851,000 for the division of family assets with her former husband which included a lump sum amount for spousal support as opposed to any prospective spousal support payments. She estimated that as of March 2018, after purchase of the Tylney Lane home and covering living expenses since receipt of the settlement, her net worth was down to approximately \$263,000.

- [22] In early 2014 while living together at the Billy Brown home, Gail testified as to how Sarah was searching homes for sale on her computer and suggested to Gail that she should consider downsizing and going in together with her and Sean on a house, stating "we are pre-financed for the condo - mom could sell Billy Brown and we could split 50/50 and all live together". Gail responded that she "might like to downsize, had no debt, had the ability to rent out rooms to students or for a B&B and was not in a hurry".
- [23] Sarah and Sean had pre-qualified for a mortgage in 2012 on the Waterleaf townhouse on the condition with the bank that Ted co-signed or guaranteed the mortgage of \$240,000.
- [24] Gail testified that soon, Sarah hired a realtor, Mr. Doerksen, who suggested homes in a new subdivision on Tylney Lane. Gail added that Sarah stated that as she and Sean would be first-time buyers, only they could qualify for the first-time buyers' exemption from payment of the property purchase tax. In response, Gail stated "I still wanted to be on title or how could I protect my interest in the property?" She stated it was also discussed that Sarah, Sean and Gail could be on title.
- [25] Following these conversations, Gail, Sarah and Sean went to see the development on two occasions. They decided to purchase the four bedroom Tylney Lane home, and it would become the home for Sarah, Sean, their very young son as well as for Gail. At the time they agreed to buy, the home was not yet under construction. The contract of purchase and sale (Ex. 1, Tab 57) was entered into by Sean and Sarah as purchasers on June 5, 2014 with a purchase price of \$499,999 plus GST with a deposit of \$10,000 which was paid by a cheque drawn by Gail. Gail testified that at the meeting with the realtor when the contract was presented:
- I gave \$10,000, I thought for the lot - I didn't think for the house too - I wanted to be on title - I thought all three of us would buy - Sarah said because of the Home grant she and Sean had to sign, it was important for the home owner grant.
- Reference to a "grant" is in error as the parties were referring to the exemption from property purchase tax.
- [26] The purchase was to complete on November 19, 2014 at which time the balance of the purchase price was payable to the developer.
- [27] All dealings with the developer and realtor were by Sean and Sarah, but primarily Sarah. Gail took no part in negotiations or making arrangements with the developer. After the contract was signed, Gail testified that Sarah discussed customizing the home with cabinets, hardwood floors and optional countertops, the cost of which Sarah agreed they "would pay me back some and pay more when the house sold in two or three years" when they contemplated a move to Kelowna.
- [28] Through the period leading up to completion of the purchase, Gail testified she firstly understood from Sarah that "[Sarah and Sean] have financing".

[29] In November 2014 prior to the closing date, Gail went to the Royal Bank with Sarah and Sean at their request. There, she learned from the bank representative Sarah and Sean could not get financing and neither could Gail. Gail could not qualify for financing as she had only a nominal income and no equity. She testified regarding learning, just a few weeks from closing, that Sarah and Sean could not get their financing:

I just said they had to find their financing we had gone in together. My obligation was to sell Billy Brown and I did that, and Sarah and Sean's was to raise their financing. That was the agreement.

[30] Gail testified that later the same day, she was told by Sarah that they, i.e., Sarah and Sean, could not get any financing and that Sarah had been unable to get Ted to co-sign due to friction with her father.

[31] At that point, Gail testified that Sarah and Sean told her that she would have to "pay the whole purchase price or be sued, lose the house and [they] would have nowhere to stay". They told Gail "you have to do something". Gail was concerned in that she "could not get out of the Billy Brown sale, [Sarah and Sean] could not get out of the Tylney purchase, they had nowhere to go ". Gail added, "I had a short term investment and I had to do this". Gail added that Sarah "[was] so remorseful and apologetic", and they would "be grateful, [she] would always have a home with them if [she] paid the heat and light and they would take care of [her]". Later, she added:

If I pay for the house, I expect to own it. The agreement was 50/50 if they came up with the financing - now it was my house and they had no financing or money into it.

[32] On November 13, 2014, Gail testified that she was told by Sarah that the purchase was ready to go and they had to go to the lawyer to sign. When asked "who selected a lawyer for you to instruct for the sale of Billy Brown?" Gail stated "Sarah". Prior to attending at the lawyer's office, Gail testified that she had "never sought or discussed a gifting letter".

[33] The parties attended at the law firm of Linley Welwood on November 13, 2014. Gail testified she had not previously been told of an appointment with a lawyer for that day. She said she had never met Mr. Wiens, who was the lawyer handling the conveyance of her Billy Brown home. She added that she was called into an office and met Mr. Wiens.

[34] Gail testified Sarah told her she was transferring money from the sale of the Billy Brown home to the purchase of the Tylney Lane home. At that point in her testimony Gail referred to instructions she had received from Sarah prior to going into the lawyer's office:

Don't screw things up, you always screw up for us, don't ask any questions, it's all arranged.

[35] Gail then described the meeting with Mr. Wiens. She met Mr. Wiens alone. She testified there were two piles of documents: one referencing the Billy Brown home, and the other referencing the Tylney Lane home. Mr. Wiens left the room and Gail reviewed some of the documents. When Mr. Wiens returned, he placed a document in front of her, saying "[d]o you know what this is?"

[36] That document was the "gift letter" (Ex. 1, Tab 76). Gail reports she saw it for the first time during that meeting with Mr. Wiens. It read as follows:

November 13, 2014

Linley Welwood LLP

(address)

Dear Sirs

Re: Sean and Sarah Bigford

Purchase of ____Tylney Lane, Abbotsford, B.C.

PLEASE BE ADVISED THAT I HAVE GIVEN TO SEAN BIGFORD AND SARAH BIGFORD A GIFT IN THE SUM OF \$482,742.18 FOR THEIR PURCHASE OF THE ABOVE PROPERTY.

Yours sincerely,

(signed - Gail Kathleen Bostrom)

[37] The amount of \$482,742.18 was, according to the purchaser's statement of adjustments, the amount required by Sarah and Sean to complete the purchase of the Tylney Lane home.

[38] Gail testified that when she saw the gift letter, "I was stupefied". She also stated that Mr. Wiens did not mention to her that he was or may be in a conflict of interest in attending on her that day. Mr. Wiens took no notes during the meeting. The meeting lasted approximately 10-15 minutes. Mr. Wiens provided no explanation as to why Gail needed to sign the document. He did not ask her any questions surrounding the transaction, nor did he inquire into her net worth, nor did he ask the portion of her net worth making up the transfer. Gail thought there was something fishy about the letter: it was not on letterhead, it did not look professional, and it did not look like the other legal documents she had signed. She thought to herself "[o]h my gosh, my daughter did this letter up".

[39] Gail says she told Mr. Wiens, "I want still to be on title". She asked if there were any options to which Mr. Wiens responded "no". Gail added that Mr. Wiens said "this is a very generous gift, it was good of you to do this for them". Still in direct examination, Gail stated there was no discussion with Mr. Wiens of a possible trust agreement or any other options. Regarding the meeting, she said:

I had no alternative, I had to sign. There was an agreement between all three of us to have the house together, split 50/50 and it did not go through, I would own the house and could re-sell. They wanted to get into another property. I am in my retirement years and this was a good venture.

I thought it was my home, I owned it even though their name was on it, but we were a close family, I trusted my daughter and son-in-law

[A]ll of my money was being transferred over to secure Tylney.

[40] The conveyance of the Tylney Lane home completed and the parties moved into the Tylney Lane home.

[41] Under cross-examination, Gail stated that after a meeting at the Royal Bank in June 2014 there was discussion that the Tylney Lane home "was the right house for Sarah, Sean and Gail, how to pay, and Sarah and Sean could not pay their half as of June" and continued "they were confident they could get financing". Gail said "there was no chance [she] agreed to pay for the whole house". She also confirmed that in June 2014 there was discussion regarding who would be on title to which Gail stated "Sarah said if [Sarah and Sean] complete the purchase on title, then we get a tax exemption".

[42] Also on cross-examination, it was suggested to Gail that "you were to pay the purchase price and Sarah and Sean were to pay your ongoing expenses indefinitely?" to which Gail responded "yes".

[43] The total amount paid by Gail from her savings towards the purchase of the Tylney Lane home was \$532,742.18 of which \$50,000 was the deposit paid to secure the home and \$482,742.18 was paid on closing.

Sarah Bigford

[44] In December of 2013, Sarah and Sean together with their six-month old son moved into the Billy Brown home purchased by Gail. She testified that by moving in with her mother, she and Sean were able to save to hopefully purchase a home in the future. They had moved in following the failed purchase of the Waterleaf townhouse and in return for being able to move in with her mother, she and Sean would assist Gail with chores around the house.

[45] Regarding the purchase of the Tylney Lane home, Sarah described how she, Sean and Gail had visited the site of the proposed home and regarding the purchase, discussed among themselves "how to make it work". Considering a purchase price of \$499,000, Sarah described how they had already been approved for a \$240,000 mortgage for the Waterleaf townhouse, and Gail would contribute \$250,000. Sarah testified that Gail had told her it "would be part of [Sarah's] early inheritance because that made sense to her". Her father, Ted, had agreed to co-sign the proposed mortgage to the Royal Bank for the Waterleaf townhouse, but was not prepared to co-sign for a mortgage on the Tylney Lane home. Sarah described how she, Sean and Gail went to the Royal Bank knowing that Ted would not co-sign, knowing that Gail had capital but nominal income, and found Gail would not qualify for a mortgage due to her income.

[46] After learning Gail could not co-sign the mortgage, the parties sat together back at the Billy Brown home on June 4, 2014. Sarah testified that she said to her mother:

[I]t just won't work unless you put up the full amount and without pause or hesitation, mom said okay. We were overwhelmed, very emotional and we were all very excited. It was right around Sean's birthday and my mom said 'Happy Birthday, you have just bought a house'.

- [47] The Contract of Purchase and Sale was executed on June 5, 2014 (Ex. 7, Tab 32) naming Sean and Sarah as purchasers.
- [48] Subject clauses included in the Contract of Purchase and Sale were removed upon execution of a Subject Removal agreement signed at the Billy Brown home on June 18, 2014. The next day, construction of the house by the developer commenced.
- [49] Sarah testified of her mother assisting her in the purchase of "upgrades" for the home. For example, she recounts Gail stating that the price at one vendor of tile was too expensive and how they then ended up purchasing tile at a more reasonable price from Costco, when her mother stated to her, "I have already bought you a house". She described her relationship with her mother to this point as "loving, we were very open with each other, honest even if it hurt".
- [50] Regarding the execution of documents for the purchase of the Tylney Lane home on November 13, 2014, Sarah described how "a man took mom into a room for fifteen minutes or so, [Gail] came out, there was no discussion". Sarah said that she and Sean had stayed in the lobby while Gail was in an office. Sarah added that she and Sean attended on Mr. Wiens for about 10 minutes, and mentioned how they signed the first-time buyer grant.
- [51] All of the funds required to purchase the Tylney Lane home were provided by Gail. Sean and Sarah had not saved any funds to be used towards the purchase of a home.
- [52] Regarding upgraded appliances purchased for the home, Sarah stated "Gail never said appliance purchases were a loan, never said we would pay for appliances".
- [53] Sarah also testified that a few months after the purchase of the Tylney Lane home, Sarah would be removed as a beneficiary under Gail's will due to having given Sarah the house, and that Sarah agreed to being removed as a beneficiary of her mother's estate.
- [54] The parties moved into the Tylney Lane home on November 20, 2014.
- [55] On cross-examination, Sarah was presented with a transcript of a telephone conversation recorded by Sarah in "early summer" of 2015, several months after the purchase of the Tylney Lane home (Ex. 2, p.2, line 38 and ff):

Ms. Bostrom: Yes, and then it was - - you said you wanted your inheritance early - -

Ms. Bigford: No I didn't.

Ms. Bostrom: Yes.

Ms. Bigford: No I didn't, I said do you want to live together, do you want to buy into the house. Then, when it was \$250,000 - -

Ms. Bostrom: 225 because I was

Ms. Bigford: No, it wasn't, it was \$250,000 because this house was \$500,000. Then I - -

At page 3 at line 27 and ff:

Ms. Bigford: It has nothing to do with getting my inheritance early, like, that's what you told Tracy too. That's not what was said, ever.

Ms. Bostrom: Yes it was.

Ms. Bigford: No, you were the one who said that. It was like you were buying into this house; it was no different that you living in Fort Langley.

Ms. Bostrom: It was - - it was basically we were splitting the house when it gets sold -
-

Ms. Bigford: That's not what we were ever saying because the house wasn't getting sold. We're living here, this wasn't an investment opportunity. You can come up with whatever stories you want.

Ms. Bostrom: It's not a story, Sarah.

[56] Also on cross-examination, Sarah was referred to her affidavit #1 filed on a previous summary trial application, specifically, para. 23(hh) of that affidavit in which she stated:

hh) Further to para. 50 of Bostrom affidavit #1 Gail agreed to give us both the legal and beneficial interest in the Property. This is evidenced in the gift letter attached above. The funds provided for that purchase were expressed in writing as a gift and expressed to me verbally as a gift. As an early inheritance this made a lot of sense because it was approximately half of Ms. Bostrom's admitted wealth and secured for her in addition to providing an early inheritance for me secured for her mitigation and for ongoing living expenses for the balance of her lifetime which she saw as a great benefit.

[57] Sarah was then asked how she determined what made "sense" as referenced in para. 23(hh) of her affidavit quoted above. Sarah then testified that she was unable to recall how she calculated the sum to be paid for the Tylney Lane home, which was approximately \$490,000, as one-half of Gail's then wealth, as she was uncertain as to what sum she used as her understanding of Gail's wealth at the time. Gail's prior advance of \$24,000 for a deposit on the failed purchase of the Waterleaf townhouse was also considered by Sarah to be an advance on her inheritance. Sarah said that made sense to her. The sum of her evidence was to the effect that Gail would still be able to live off of the remaining one-half of her estate considering the promise that Gail would live with Sarah, Sean and their family.

[58] Also during her lengthy cross-examination, Sarah acknowledged that after the dates of June 4 and 5, 2014 when she testified her mother had agreed to cover the entire cost of the purchase of the Tylney Lane home, she and Sean agreed they continued to look for financing

for \$250,000 for their portion of the purchase price, saying, as she confirmed her examination for discovery evidence, that it was a "few days" after the agreement to buy the Tylney Lane home that she, Sean and her mother attended at the Royal Bank and learned financing was not available. Put another way, she agreed that the commitment which had previously been received for a mortgage for the Waterleaf project, on which Gail was to be a guarantor, was not available for the purchase of the Tylney Lane home and that she, Sean and her mother could not together qualify for a mortgage. Sarah also testified that they had also approached the TD Bank after June 5, 2014 for financing without success.

- [59] No adequate explanation was provided by Sarah as to why she would be looking for financing if her mother had already agreed to put up the entire purchase price. Sarah did testify that she was aware as of June 5, 2014 that she and Sean were committed to purchase the Tylney Lane home and had to pay the full purchase price without mortgage proceeds.
- [60] Still later in her cross-examination, Sarah was questioned extensively on her knowledge as to when Gail allegedly committed to pay the entire purchase price for the Tylney Lane home. To summarize, she and Sean knew as of June 5, 2014 that they could not get financing. The Royal Bank commitment for the Waterleaf project was two years prior when Sarah was employed, as of June 2014 she was not working. Her mother had no income and could not qualify for a mortgage. Her father, Ted, was no longer prepared to provide a guarantee. Sarah also agreed that she knew Sean's family would not co-sign a mortgage as Sean had become estranged from his family.
- [61] Yet, she also admitted that as of November 2014 she and Sean were still looking for financing of \$250,000 to satisfy their portion of the purchase proceeds, presumably because they knew that Gail had only committed to putting up one-half of the purchase price and would be an owner. This evidence conflicts with the statements by Sarah that her mother had committed to provide the entire purchase price by June 4, 2014 which, if true, would have meant that there was no reason to seek financing after a commitment was made.
- [62] Later in her cross-examination, Sarah testified that Gail promised to pay all proceeds for the purchase before June 4, 2014, saying they had not been at the bank after that date. Such a statement was significantly different than her earlier testimony.
- [63] The Court finds that the most likely scenario which resulted in Gail deciding to provide all of the funds for the purchase of the Tylney Lane home was that Gail was told and realized in November 2014 that Sarah and Sean were unable to raise funds with a mortgage. It is also most likely that Sarah and Sean knew, as of June 2014 that they would not be able to raise mortgage funds and did not so inform Gail. They may have attempted to secure mortgage financing during the period from early June 2014 to early November 2014 but they had not been successful and knew that if the Tylney Lane home was to be purchased, Gail would have to provide all of the funds.

[64] The inference to be drawn is that Gail never did agree to put up the entire purchase price until shortly before the closing. She agreed only at a point in time when her Billy Brown home was sold and she, Sarah, Sean, and their son would have no place to live if the Tylney Lane purchase did not complete. They faced a loss of the deposit, and Sarah and Sean faced a potential claim for damages if the purchase did not complete.

Sean Bigford

- [65] Sean's evidence was brief. He testified about a visit to the Tylney development with Sarah and Gail in late May 2014 during which Sarah asked Gail to put up \$250,000 for the purchase of the Tylney Lane home to which Gail agreed. He added that later at dinner, "Gail said it would be a portion of Sarah's inheritance - it was gracious, and I was thankful, it was a large gift for me".
- [66] On a subsequent visit to the Tylney development in early June 2014, Sean, Sarah, and Gail decided Tylney was the home for them. They went to see Ms. Campbell at the Royal Bank with the purpose of securing a mortgage for the other \$250,000 needed to purchase Tylney. At that meeting, they learned that Gail could not be a co-signer on a mortgage due to her modest income. All left the meeting at the bank disappointed at not being able to secure financing for the balance of the purchase price. Sean stated that after the meeting at the bank, the parties went to the Billy Brown home and had a discussion, Sarah stating that the only way it will work is if Gail put up the whole \$500,000 to which Gail replied with "okay!" Sean then stated that he responded to Gail with "you will not pay for anything if that is the case", referring to living expenses in the house after moving in and that the \$500,000 would represent the entirety of Sarah's inheritance.
- [67] Based upon his evidence, it is most likely the last discussion at the Billy Brown home, if it took place at all, would have occurred on or about June 4 or 5, 2014.
- [68] When asked on cross-examination how he considered he and Sarah would have been able to buy the Tylney Lane home before Gail said she would come up with the funds, he stated by "budgeting" a \$500,000 purchase.
- [69] Sean's evidence, like that of Sarah's, is not credible. They had no chance on their own to be able to purchase a home for \$500,000 or any other lesser amount. They could not qualify for a mortgage and had no money saved to place toward a deposit. The evidence of Sarah of how they continued to seek mortgage financing after Gail allegedly had agreed to put up \$500,000 made no sense as they would not have had to obtain financing in that event. Likewise, there was no conceivable means by which Sarah and Sean on their own would have been able to purchase the Tylney Lane home. "Budgeting" was not an option for them. The Court notes that they have admitted the loan from Gail of \$35,000 for the purchase of Sean's truck, which was granted prior to the Tylney Lane home being purchased, and they have not made payments on that much smaller loan and never did save any money while living with Gail at the Billy Brown home.

[70] The Court also notes that Sean was in attendance at trial during Sarah's testimony and was likely influenced by her evidence.

Howard Wiens

[71] Mr. Wiens is an experienced real estate lawyer practicing in Abbotsford.

[72] Mr. Wiens testified that at the meeting with Gail, he asked her if the transfer of funds from the Billy Brown sale to the Tylney Lane home purchase was a gift, loan or investment and she said "gift". He then said "we talked a little bit about three options". He added that Gail stated she was "happy to do this" and that he "put the gifting letter in front of her and she signed it". He said their meeting lasted approximately 15 minutes.

[73] Mr. Wiens added that he "did not give any specific advice. I tried to determine the nature of the transfer of money and Ms. Bostrom's intent".

[74] Later, Mr. Wiens testified he had no specific instructions to prepare a gift letter and believed it had been prepared by his assistant.

[75] On cross-examination, Mr. Wiens was asked why he did not prepare a memorandum of his discussion with Gail and he stated he "thought the language was clear" and that the direction to pay and gift letter had been prepared before Gail attended at his office.

[76] He also acknowledged that the documents signed by Gail did not provide any benefit for Gail. Mr. Wiens agreed that he did not tell Gail that the gifting letter was for his benefit, not hers.

[77] Mr. Wiens was asked if there was a conflict of interest in advising Gail while acting for the Bigfords and whether he obtained a waiver to which he answered "no", stating there was no conflict because they were two independent transactions, i.e., the sale of the Billy Brown home and the purchase of the Tylney Lane home.

Life at Tylney Lane

[78] Upon completion of the purchase, the parties together with Sean and Sarah's son as well as Gail's dog and cat all moved into the Tylney Lane home. Life together at Tylney Lane proved to be, to put it mildly, a disaster for Gail as is evidenced by the transcripts of phone calls with Gail recorded by Sarah and entered as Exhibits 2 and 5 at trial. To summarize, from shortly after commencing life together at the Tylney Lane home, Sarah criticized her mother extensively over her cleanliness, eating habits, leaving of dirty dishes, complained of dog hair shed by Ms. Gail's long-time pet, without authorization charged purchases to her mother's credit card, and much, much more.

[79] The actions and words of Sarah and Sean directed at Gail were extensive, humiliating, hateful and, to say the least, rude, which was not typical of the relationship between them when living at the Billy Brown home. The exchanges were recorded by Sarah and include one transcript, Exhibit 5, which covers thirty-two pages of insults from Sarah and Sean

which eventually led to Gail moving out of the Tylney Lane home, after approximately one year. At one point, Sarah took Gail's long-time dog, gave it away and refused to tell Gail where the dog had been taken and said that it was not coming back. There can be no other conclusion to be reached after reading the transcripts, correspondence (Ex. 1, Tab 88) and viewing photos (Ex. 1, Tab 37) of the home taken by Sarah that she and her husband made life in the home so uncomfortable and stressful that Gail had no choice but to leave. The photos at Tab 37 were relied upon by Sarah as evidence of her mother's lack of tidiness which somehow justified many of the insults directed at Gail. A review of those photos indicates very common sights within a home and do not reflect any disregard for the care of the home on the part of Gail, even if a lack of tidiness was relevant, which it is not.

[80] I conclude this section of the reasons by referring to an email message sent by Sarah to Gail on March 31, 2015 prior to Gail eventually moving out of the Tylney Lane home, in which Sarah roundly and rudely criticized her mother for matters which the Court finds as false or very inappropriate. It is worth keeping in mind that at the time of the email, Gail had used the vast majority of her cash to purchase a home in which her daughter and son-in-law were residing and continue to do so, a home in which Sarah and Sean had contributed no investment:

Further, I would appreciate you getting a full exam for dementia as you will see in the "Early signs of dementia" article you have all the symptoms but one and I don't take this lightly. At least if we know there is something going on we can help you get well, but if you just a crazy bitch who like to make her child look like she is the worst person in the world, well then you going to have to make some changes if you want to be in my life. I love you Mom and hope you make the right choice

[81] The evidence at trial disclosed that the email of March 31, 2015 was sent shortly after Gail had disclosed to her sister and it has subsequently become known to other family members that Sarah and Sean had contributed nothing to the purchase of their home and that difficulties had arisen for Gail in living with Sarah and Sean.

[82] On cross-examination, Sarah stated that she could recall no symptoms of dementia which had been exhibited by Gail and later stated that "looking back, it was not dementia, but memory loss here and there".

Applicable Law

Preliminary Matters

[83] Gail seeks a declaration of her interests in land arising from the operation of a resulting trust. The Law and Equity Act, R.S.B.C. 1996, c. 253, s. 59, does not apply to alleged agreements between parties to purchase land together, where one party later seeks relief in the form of a declaration of an equitable interest in property, now held by another as a result of the parties' venture, and based on creation of a trust: *Kashani v. Dhalla*, [1998] B.C.J. No. 3034 (B.C.S.C.) at para. 10; see also *Datatech Systems Inc. v. Dallas House Society*, 2011

BCCA 227; see e.g. *Swanstrom v. Wuest*, 2018 BCSC 2299.

[10] the prayer for a declaration by the court that the plaintiff has an equitable interest in the property are based on what is alleged to be the creation of a trust, thus taking the case out of the ambit of s. 59 of the Law and Equity Act. Whether the court can find that a trust of any kind was created by the dealings between the parties will depend very much on the assessment of the evidence to be given by the witnesses.

[84] The Land Title Act, R.S.B.C. 1996, c. 250, s. 23(2) provides that title is conclusive evidence that the title-holder named as registered owner is indefeasibly entitled to an estate in fee simple to the land described in the title. The statutory presumption can be rebutted if there is a resulting trust.

Presumption of Advancement between Parents and Adult Children

[85] There is no presumption of advancement between parents and their adult children: *Pecore v. Pecore*, 2007 SCC 17 [*Pecore*]. Transfers between parents and adult children are presumed by equity to be bargains and not gifts. The Supreme Court of Canada holds that the appropriate presumption in the case of a child who has reached the age of majority is the presumption of a resulting trust. The presumption of resulting trust persists regardless of the adult child's financial dependency on her transferor-parent: *Pecore* at paras. 40-41.

40 As compelling as some cases might be, I am reluctant to apply the presumption of advancement to gratuitous transfers to "dependent" adult children because it would be impossible to list the wide variety of the circumstances that make someone "dependent" for the purpose of applying the presumption. Courts would have to determine on a case-by-case basis whether or not a particular individual is "dependent", creating uncertainty and unpredictability in almost every instance. I am therefore of the opinion that the rebuttable presumption of advancement with regards to gratuitous transfers from parent to child should be preserved but be limited in application to transfers by mothers and fathers to minor children.

41 There will of course be situations where a transfer between a parent and an adult child was intended to be a gift. It is open to the party claiming that the transfer is a gift to rebut the presumption of resulting trust by bringing evidence to support his or her claim. In addition, while dependency will not be a basis on which to apply the presumption of advancement, evidence as to the degree of dependency of an adult transferee child on the transferor parent may provide strong evidence to rebut the presumption of a resulting trust.

"Gratuitous Transfer" Resulting Trusts

[86] There are two species of resulting trusts triggered by gratuitous transfer.

- [87] The first species of gratuitous transfer resulting trust arises when one party gratuitously transfers all or part of her interest in held property to another. Equity presumes bargains, not gifts. A transfer will be gratuitous if the transferee does not provide consideration at the time of the transfer: see e.g. *Franklin v. Cooper*, 2015 BCSC 1819, aff'd 2016 BCCA 447.
- [88] The second species of gratuitous transfer resulting trusts involves one party using her money to purchase property, and that property subsequently being put in another party's name or in the joint names of the purchasing party and the other party. This species of gratuitous transfer is commonly called the "purchase in the name of another" or "purchase money" resulting trust.
- [89] The Supreme Court of Canada said in *Rascal Trucking Ltd. v. Nishi*, 2013 SCC 33 at paras. 21-22 [*Rascal Trucking*]:
- [21] The purchase money resulting trust is a species of gratuitous transfer resulting trust, where a person advances a contribution to the purchase price of property without taking legal title. Gratuitous transfer resulting trusts presumptively arise any time a person voluntarily transfers property to another unrelated person or purchases property in another person's name: D. W. M. Waters, M. R. Gillen and L. D. Smith, eds., *Waters' Law of Trusts in Canada* (4th ed. 2012), at p. 397.
- [22] As Cromwell J. noted in *Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 269 (S.C.C.), at para. 12, it has been "settled law since at least 1788 in England (and likely long before) that the trust of a legal estate, whether in the names of the purchaser or others, 'results' to the person who advances the purchase money".

[Emphasis added]

- [90] The oft-quoted statement to which the Supreme Court in *Rascal Trucking* referred to at para. 22 echoes *Dyer v. Dyer* (1788) 30 E.R. 42 (Exch.) at 43.

The clear result of all the cases, without a single exception, is that the trust of a legal estate, whether freehold, copyhold, or leasehold; whether taken in the names of the purchasers and others jointly, or in the names of others without that of the purchaser; whether in one name or several; whether jointly or successive, results to the man who advances the purchase-money.

- [91] A resulting trust on the basis of purchase in the name of another has two key elements.
- [92] First, the transferor must show that she was the one who provided the purchase money: *Waters' Law of Trusts in Canada*, 4th ed., by Donovan W.M. Waters, Mark R. Gillen and Lionel D. Smith (Toronto: Carswell, 2012) at 401-405 [*Waters, Gillen & Smith, Law of Trusts*].
- [93] Second, the transferor must satisfy the court that she was acting as a purchaser herself through the transaction, i.e., that she was putting up the purchase money: *Waters, Gillen & Smith, Law of Trusts* at 401-405. The transferor must not have been putting up the purchase money as a loan to the other party who now holds title, or with whom the transferor has joint title. If the party who put up the money was doing so as a loan to the other party, their

relationship is creditor-debtor, and resulting trusts do not apply: *Carpe Investments Corp. v. Creative Prosperity Capital Corp.*, (1998) 6 C.B.R. (4th) 230 (B.C.C.A.) (WL) at para. 6. The payor-party who attempts to show she acted as purchaser because of the transferee's impecuniosity may very well have been loaning the funds for the transferee's period of impecuniosity, making resulting trusts inapplicable. Loans in the familial context are characterized by contemporaneous documents evidencing a loan, specified manner of repayment, security taken or held, demands for repayment made, partial repayment, and the expectation of repayment: *Grosseth Estate v. Grosseth*, 2017 BCSC 2055 at para. 13; *Kuo v. Chu*, 2009 BCCA 405 at para. 9.

Rebutting the Presumption of a Resulting Trust

[94] If the court finds a resulting trust, the transferee may rebut the presumption by showing on a balance of probabilities that the transferor intended to make a gift: *Pecore* at para. 44.

44 As in other civil cases, regardless of the legal burden, both sides to the dispute will normally bring evidence to support their position. The trial judge will commence his or her inquiry with the applicable presumption and will weigh all of the evidence in an attempt to ascertain, on a balance of probabilities, the transferor's actual intention. Thus, as discussed by Sopinka et al. in *The Law of Evidence in Canada*, at p. 116, the presumption will only determine the result where there is insufficient evidence to rebut it on a balance of probabilities.

[Emphasis added]

[95] A legal gift of an interest in land considers if "intention at the time of the advance was to make a legal gift -- i.e. to contribute to the purchase price without taking a beneficial interest in the property": *Rascal Trucking* at para. 38. The court looks to "a contribution to the purchase price without any intention to impose conditions or requirements": *Rascal Trucking* at para. 31.

[96] To determine the intention of the transferor, the Court said in *Rascal Trucking* at para. 41.

[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.

[97] If the transferee establishes on a balance of probabilities that the transferor intended to make a gift, the presumption of resulting trust will be rebutted.

Influences and Insufficient Legal Advice

[98] Gleaning the transferor's intention must be qualified by any finding of undue influence and the sufficiency of legal advice in the circumstances.

[99] There can be no gift where the transfer was under undue influence: *Brown v. Manuch Estate*, 2015 BCSC 1966 at para. 152; *Williams v. Williams Estate*, 2018 BCSC 711 at paras. 166-170. A presumption of undue influence arises where the relationship between the parties gives rise to the potential of domination of one party by another: *Boda Estate v. Boda*, 2014 BCCA 354 at paras. 75-76. The presumption does not usually apply to transfers from parents to adult children if the parent is in good health and in possession of her faculties, unless the parent is dependent, vulnerable to manipulation, or has been historically dominated by the adult child: *Mondenese v. Delac Estate*, 2011 BCSC 82 at paras. 102-110. See *Stewart v. McLean*, 2010 BCSC 64 at para. 92 [Stewart] citing the Supreme Court of Canada:

[92] The presumption of undue influence arises when a plaintiff establishes that the potential for influence exists or existed in the relationship: *Geffen v. Goodman Estate*, [1991] 2 S.C.R. 353, 81 D.L.R. (4th) 211. In *Geffen*, Justice Wilson at 377 defined influence:

It seems to me rather that when one speaks of "influence" one is really referring to the ability of one person to dominate the will of another, whether through manipulation, coercion, or outright but subtle abuse of power. ... To dominate the will of another simply means to exercise a persuasive influence over him or her. The ability to exercise such influence may arise from a relationship of trust or confidence but it may arise from other relationships as well.

[100] If the presumption of undue influence applies, the onus moves to the transferee to show the transferor made the gift with "full, free and informed thought": *Cowper-Smith v. Morgan*, 2016 BCCA 200 at para. 50 [Cowper-Smith BCCA], rev'd on other grounds in 2017 SCC 61. To show full, free and informed thought, the following factors are relevant: *Stewart* at para. 97, adopted in *Cowper-Smith BCCA*, at para. 50:

[97] To rebut the presumption of undue influence, the defendant must show that the donor gave the gift as a result of her own "full, free and informed thought": *Geffen* at 379. A defendant could establish this by showing:

- a. no actual influence was used in the particular transaction or the lack of opportunity to influence the donor (*Geffen* at 379; *Longmuir* at para. 121);
- b. the donor had independent advice or the opportunity to obtain independent advice (*Geffen* at 379; *Longmuir* at para. 121);
- c. the donor had the ability to resist any such influence (*Calbick v. Warne*, 2009 BCSC 1222 at para. 64);
- d. the donor knew and appreciated what she was doing (*Vout v. Hay*, [1995] 2 S.C.R. 876 at para. 29, 125 D.L.R. (4th) 431); or
- e. undue delay in prosecuting the claim, acquiescence or confirmation by the deceased (*Longmuir* at para. 76).

Another relevant factor may be the magnitude of the benefit or disadvantage (Geffen at 379; Longmuir at para. 121).

[101] With regard to the sufficiency of independent legal advice as it pertains to free, full and informed thought, the following factors are relevant: Cowper-Smith BCCA, at para. 51.

51 The following considerations have also been identified as relevant to the assessment of the legal advice provided to the donor (Fowler Estate v. Barnes (1996), 142 Nfld. & P.E.I.R. 223 (Nfld. T.D.), Green J., adopted in Coish v. Walsh, 2001 NFCA 41 (Nfld. C.A.) at para. 23):

1. Whether the party benefiting from the transaction is also present at the time the advice is given and/or at the time the documents are executed;
2. Whether, though technically acting for the grantor, the lawyer was engaged by and took instructions from the person alleged to be exercising the influence;
3. In a situation where the proposed transaction involves the transfer of all or substantially all of a person's assets, whether the lawyer was aware of that fact and discussed the financial implications with the grantor;
4. Whether the lawyer enquired as to whether the donor discussed the proposed transaction with other family members who might otherwise have benefited if the transaction did not take place; and
5. Whether the solicitor discussed other options whereby she could achieve her objective with less risk to her.

[The "Coish" factors; citations omitted in original.]

[102] These factors are not exhaustive. There is no need for all factors to be present.

Determining the Value held on Resulting Trust

[103] If a resulting trust does exist, the question remains what or how much is held on a resulting trust for the benefit of the transferor. The Supreme Court of Canada said: Rascal Trucking at para. 29:

[29] In the context of a purchase money resulting trust, the presumption is that the person who advanced purchase money intended to assume the beneficial interest in the property in proportion to his or her contribution to the purchase price: see Waters' Law of Trusts in Canada, at p. 401.

Application of the Law and Decision on Resulting Trust

- [104] The law presumes bargains not gifts in transfers between Gail and her adult daughter Sarah and son-in-law Sean. Sarah and Sean's financial dependency on Gail for a place to live does not bear in determining the appropriate the presumption. The presumption of resulting trust, wherein Sarah and Sean are holding the Tylney Lane home for the benefit of Gail, applies.
- [105] Gail used her money to purchase the Tylney Lane home, the title to which was placed in the names of Sarah and Sean. If Gail provided the purchase money as a purchaser in her own right, she will have completed a purchase in the name of others.
- [106] The evidence is undisputed that Gail provided the purchase money totalling \$532,742.18, consisting of a deposit of \$50,000 and the amount of \$482,742 provided from the sale of the Billy Brown home. The first element of a purchase money resulting trust is satisfied.
- [107] The second element of a resulting trust is the requirement for the transferor to establish that in providing the funds for the purchase, she was acting as a purchaser and not a lender. Gail's testimony, which I accept, is that she was always intending to be an owner equal to the proportion of her pecuniary contribution. Her intention was, up to early November 2014, that she would have a one-half interest in the Tylney Lane home, and that Sarah and Sean would hold the other one-half interest, assuming they were going to provide mortgage financing for the other one-half of the purchase price. In November 2014, Gail realized that Sarah and Sean were not able to provide funds to match their investment with that of Gail. Gail realized she would have to provide the entire purchase price. She agreed to do so with considerable reluctance.
- [108] Gail's providing the funds was not structured as a debt. There were no contemporaneous documents referring to the parties or evidencing a loan between them. There was no specified manner of repayment to Gail by Sean and Sarah. Gail took comfort in having the home as an investment that she could later sell, but she did not take it as security for a loan per se. Gail did not demand full or partial repayment, or appear to have the expectation of repayment. The evidence suggests that it was consolation enough for her that this was a good venture because she, as the sole contributor to the purchase price, could sell the house and recover her investment in the current market and make use of the proceeds to live during her retirement. To this end, she said as the 50/50 arrangement did not go through "I would own the house and could re-sell. [Sarah and Sean] wanted to get into another property [in Kelowna], I am in my retirement years and this was a good venture". She made contingency plans consistent with the options available to sole purchasers with complete ownership interest. She acted as sole purchaser, and acted consistent with the intention to be a sole purchaser. Gail was not acting as a creditor, but as a purchaser in her own right.

- [109] The purchase money resulting trust established, the onus shifts to Sarah and Sean to rebut the presumption of a resulting trust by showing Gail intended to make a gift to them. They have failed for two reasons.
- [110] As a preliminary note, the fact that Gail made gifts to her children in the past does not determine whether she intended to make a gift to Sarah and Sean in respect of the Tylney Lane home purchase. Gail's bare signature on the gift letter is not determinative proof of her intention to make a gift. Gail signed a gift letter in the past concerning Sarah and Sean's Waterleaf purchase. Just because the gift letter captured Gail's intention in Waterleaf transfer does not mean that the gift letter embodies a similar intention in Tylney transfer. Gail's intention is gleaned from the specific circumstances.
- [111] First, the evidence does not disclose that Gail intended to transfer any of the interest flowing from her pecuniary contribution to the Tylney Lane home to Sarah and Sean. Her evidence is that she thought she owned the whole house because she paid for the whole house. Gail would not have entertained the option of selling the house and retaining all of the value for herself if her intention was that Sarah and Sean would have half that interest because of a gift.
- [112] Secondly, the presumption of undue influence applies. Even if some facts suggest Gail's intention to make a gift, which I have not found, the evidence does not establish that Gail made the gift with free, full and informed thought.
- [113] Gail was in good health and had all of her faculties at the subject time. Usually, the presumption of undue influence would not apply. However, the relationship between Gail and Sarah was ripe for undue influence. First, Sarah was in a position where she could manipulate her mother's generosity for the end of Gail paying the whole purchase price because if Gail did not, they would not have anywhere to live. Secondly, Gail trusted and had confidence in her daughter to protect her interests. Gail sold her comfortable, debt-free, Billy Brown home, placing trust in her daughter and Sean. Gail said "I thought it was my home, I owned it even though their name was on it, but we were close family. I trusted my daughter and son-in-law". Gail was faced with the dire circumstance of her daughter, son-in-law, and young grandchild having no place to live, losing the \$50,000 deposit, and Sarah and Sean being subject to a claim of damages for the contract falling through. The trusting relationship put her in a position where she was compelled into transferring a large sum of money.
- [114] Given that the presumption of undue influence applies, the transferees Sarah and Sean may show that Gail nonetheless made the transfer with full, free and informed thought. On the evidence, they have not shown that Gail exercised full, free and informed thought in making the cash transfer detailed in the gift letter.
- [115] The gift letter did not capture Gail's intentions in this instance. While a gift letter has the potential to demonstrate Gail's intention, it is not determinative evidence of Gail's intention to make a gift when other facts clearly show the opposite. Gail signed a gift letter in the past

when Sarah and Sean were planning to purchase at Waterleaf developments. The circumstances of the Waterleaf transfer are different from the circumstances of the alleged Tylney Lane transfer. Gail's evidence is that "this is no gift. I'm transferring my money from one house to the other house". She believed that she was signing the gift letter this time to ensure that Sarah and Sean were the on-paper buyers. Gail intended to do what she could so that Sarah and Sean could use their first-time homebuyers' treatment toward a home the three of them together would enjoy. Gail did not intend the gift letter to transfer the funds to Sarah and Sean. She did not appreciate the purported legal effect of the gift letter in this instance.

- [116] Gail did not have the ability to resist Sarah's influence because of the perceived consequences of not signing. Her evidence is that she was "stupefied". She believed she had no choice but to provide the entire cost of the purchase because otherwise she would lose the \$50,000 deposit she had posted. She is retired, has a very modest monthly income, and a fixed amount of cash to carry her through the rest of her days. Having sold the Billy Brown home, she, Sarah and Sean and their son would have nowhere to live. She is a generous and loving mother. It is clear why such pressures, in the context of Gail's character and life circumstances, would leave her believing that there was no other option than for her to pay the whole amount and sign all documents she was told necessary.
- [117] In my view, the most significant factor regarding Gail's full, free, and informed thought were the circumstances of her attendance upon Mr. Wiens for legal advice. The legal advice obtained was insufficient for three reasons, all of which were highlighted by the Court of Appeal in Cowper-Smith BCCA at para. 51:
1. Even though Mr. Wiens was technically acting for Gail as the transferor, he was also engaged by, and appears to have taken instructions from Sarah: the person appearing to be asserting the influence on Gail. Mr. Wiens facilitated Gail's execution of a "gift" that he would eventually apply to the Tylney purchase for Sarah. Mr. Wiens could not have facilitated Sarah and Sean's purchase of the Tylney Lane home without Gail's gift. The couple did not have any savings, financing, or personal relatives to loan them money to complete the purchase.
 2. The \$482,742.18 "gift" transfer involved over half of Gail's fixed assets, the rest of her money coming from a very modest monthly income. Mr. Wiens did not investigate nor inform himself of Gail's net worth, her income or expenses, nor the financial consequences to her of transferring such a large sum of money before facilitating the purported transfer.
 3. Mr. Wiens did not inform Gail of any alternative, less risky options to achieve the Tylney Lane home purchase. Gail expressed desire to maintain her interest in the property, for example, by asking to be on title. During the meeting she said, "I still want to be on title" with no ambiguity. She asked if there were other options. Mr. Wiens responded with a curt "no" and that was the end of it.

- [118] Mr. Wiens had no notes or memoranda from the meeting with Gail, acknowledged the meeting occurred three and one-half years previous and that the meeting lasted a total of approximately fifteen minutes. I conclude that Mr. Wiens' recollection of what was said by both him and Gail at that meeting was to some degree speculative and based upon his usual practice as opposed to what may or may not have been said that day in November 2014.
- [119] Mr. Wiens provided insufficient legal advice to empower Gail's free, full and informed thought.
- [120] Gail signed the gift letter presented to her on the understanding that she would be an owner, whether on title or not and that by signing the gift letter she was saving the cost of the property purchase tax which would have applied were she to be a legal owner, i.e., a registered owner. Although Gail did not use the term "beneficial" owner, I find that the concept of what she considered at the time was that she was becoming a beneficial owner. It would be illogical to think that a sixty-four year old divorcee, with nominal income, who owned her townhouse clear of financial incumbrances would provide an early inheritance on the basis of a gift to her daughter, the amount of which was well over half of her remaining funds from her divorce settlement. It would be logical for her to consider that she would have an ownership interest in the property.
- [121] Based on the circumstances under which Gail signed the gift letter and her testimony, Sarah and Sean clearly fail to rebut the presumption of a resulting trust in Gail's favour.

Conclusion

- [122] Gail Bostrom is granted a vesting order granting her title to the Tylney Lane home.
- [123] Gail Bostrom is also entitled to judgment in the amount of \$35,000 against the defendants in debt plus Court Order Interest from the date of the advance. Upon reviewing the evidence, the date the \$35,000 was advanced is not clear.

Costs

- [124] As Ms. Bostrom has been substantially successful, she would typically be entitled to the costs of this action. However, there may be facts of which I am not aware which may affect a decision on costs and so, I am prepared to receive submissions in writing from the parties up to thirty days from the date these reasons for judgment are issued, which submissions should also consider the level of costs applicable in the circumstances.

"Jenkins J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/19/00/2019BCSC0079.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/bostrom-v-bigford-2019>

Prepared on 26 October 2026 · Esheria