

CANADA / JUDGMENT

Burelle v. Miller

2025 BCSC 2498

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 2498 Burelle v. Miller

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Burelle v. Miller,

2025 BCSC 2498

Date: 20251216

Docket: S235524

Registry: Vancouver

Between:

Meeka Burelle, Janice Lynn Burelle,

and Raymond Burelle

Plaintiffs

And

Stephen M. Miller, in his capacity as interim administrator of the Estate of

Friedrich Thomas Ecker, deceased, Kathleen Lagos in her capacity as

Executor of the Will of Friedrich Thomas Ecker, deceased and in her personal capacity, Nathan
Emmanuel Ecker, Helen Zahara, and Steve Risser

Defendants

Before: The Honourable Justice Latimer

Reasons for Judgment

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(May 26, 2025)

No further appearances

Place and Dates of Trial:

Vancouver, B.C.

May 26-30 and June 2-6, 2025

Written Submissions of the Plaintiffs:

June 10, 2025

Place and Date of Judgment:

Vancouver, B.C.

December 16, 2025

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Introduction

- [1] To avoid confusion, I have adopted the same naming convention as the parties in this proceeding and will refer to the parties who share the same last name by their first names, meaning no disrespect in doing so.
- [2] In this action, the plaintiffs claim they had an oral agreement with the late Friedrich Thomas Ecker ("Thom") whereby, provided that Janice Lynn Burelle ("Lynn") and Raymond Burelle ("Raymond") took certain actions and forbore from taking other actions, Thom would gift the property located at Black Creek, BC (the "Black Creek Property") to Lynn and Raymond's daughter, Meeka Burelle ("Meeka"). The plaintiffs advance their claim in proprietary estoppel, contract, or in the alternative, unjust enrichment.

- [3] The plaintiffs' claim is opposed by Nathan Ecker ("Nathan"), Thom's only offspring. It is also opposed by the defendant Kathleen Lagos, a close friend of Thom's. The defendants Helen Zahara and Stephen Risser took no position in this action. Both were called to give evidence on behalf of the defendants.
- [4] Thom died intestate after having instructed a lawyer to prepare a draft will but before reviewing or signing it (the "Draft Will"). The Draft Will did not gift the Black Creek Property to Meeka. However, all of Meeka, Nathan, Ms. Lagos, Ms. Zahara, and Mr. Risser ("Beneficiaries") were named beneficiaries in the Draft Will.
- [5] Because of an earlier settlement of an action to cure the deficiencies of the Draft Will ("Will Action"), both Nathan and Ms. Lagos stand to receive an interest in the Black Creek Property if the plaintiffs' claim fails. Irrespective of the resolution of this action, all the Beneficiaries have benefited from the settlement of the Will Action.

Procedural History

- [6] On February 13, 2023, Nathan filed a submission for estate grant of administration without will annexed with supporting affidavit. On April 25, 2023, on Nathan's application, Stephen Miller was appointed as the administrator of the estate.
- [7] On May 29, 2023, Ms. Lagos filed the Will Action. Nathan was a defendant in the Will Action. On November 21, 2023, Ms. Zahara, Mr. Risser and Meeka were added as defendants in the Will Action.
- [8] The Will Action was settled by way of consent order dated February 27, 2025 ("Settlement"). The Settlement provides, among other things:
1. The within claim is hereby dismissed.
 2. NATHAN EMANUEL ECKER (the "Administrator") is hereby appointed as the administrator of all the estate which by law devolves to and vests in the personal representative of FRIEDRICH THOMAS ECKER (the "Deceased"), late of Merville, British Columbia, who died at Courtenay, British Columbia.
 3. A grant of administration without will annexed, shall be issued to NATHAN EMANUEL ECKER as administrator of the Estate of FRIEDRICH THOMAS ECKER and Stephen M. Miller is discharged as administrator pending litigation subject to the approval or passing of his accounts.
 4. The Administrator shall distribute the Estate of FRIEDRICH THOMAS ECKER as follows:
 - (a) All bank accounts and financial accounts belonging to the Deceased shall be divided and distributed as follows:
 - (i) Seventy-five percent (75%) to NATHAN EMANUEL ECKER; and

- (ii) Twenty-five percent (25%) to KATHLEEN LAGOS.
- (b) The net sale proceeds of the Deceased's property located at [address redacted] , Merville, British Columbia shall be divided and distributed as follows:
 - (i) Seventy-five percent (75%) to NATHAN EMANUEL ECKER;
 - (ii) Fifteen percent (15%) to KATHLEEN LAGOS;
 - (iii) Five percent (5%) to HELEN ZAHARA;
 - (iv) Two and a half percent (2.50%) to STEVE RISSER; and
 - (v) Two and a half percent (2.50%) to MEEKA BURELLE.
- (c) The net sale proceeds of the Deceased's property located at [address redacted] Black Creek, British Columbia, shall be divided and distributed as follows:
 - (i) Seventy-five percent (75%) to NATHAN EMANUEL ECKER; and
 - (ii) Twenty-five percent (25%) to KATHLEEN LAGOS.
- (d) The residue of the Estate of FRIEDRICH THOMAS ECKER shall be divided and distributed as follows:
 - (i) Seventy-five percent (75%) to NATHAN EMANUEL ECKER;
 - (ii) Seventeen and a half percent (17.50%) to KATHLEEN LAGOS;
 - (iii) Seven and a half percent (7.50%) to HELEN ZAHARA;
- 5. The settlement of the within claim is without prejudice to:
 - a. the right of MEEKA BURELLE to pursue her claim in estoppel in relation to the Black Creek property referenced at paragraph 4(c) of this order, in Supreme Court of British Columbia action no. S235524 (the "Estoppel Action"); and
 - b. the right of the defendants to the Estoppel Action to defend the claims of MEEKA BURELLE brought therein.
- 6. Each party to bear their own costs.
- [9] Nathan, Ms. Lagos, Meeka, Mr. Miller, Ms. Zahara and Mr. Risser are all signatories to the Settlement, either in their own capacity or through their counsel.
- [10] The Settlement proceeded without curing the Draft Will. It is common ground that the Settlement is a compromise of all parties' positions. Ignoring the implications of this action, if the Court had refused to cure the will, Nathan would have been entitled to 100% of Thom's estate, Thom having died intestate. If the Court had agreed to cure the will, the named beneficiaries would have been entitled to the gifts made under it. Nathan on the one hand, and the other beneficiaries under the Draft Will on the other, effectively split the risk of the lawsuit. The other beneficiaries accepted 50% of what they would have been entitled to

under the Draft Will with the other 50% going to Nathan. Nathan gave up his ability to claim 100% of Thom's estate.

[11] This Settlement is without prejudice to Meeka's right to pursue this action and to the defendants' rights to defend against it.

[12] This action was filed by the plaintiffs on August 3, 2023.

Issues

[13] The issues for determination are the following:

- a) Whether Meeka is entitled to a 100% ownership interest in the Black Creek Property pursuant to the doctrine of proprietary estoppel;
- b) In the alternative, whether Meeka is entitled to a 100% ownership interest in the Black Creek Property on the basis of specific performance for breach of contract;
- c) In the further alternative, whether Raymond and Lynn are entitled to a full or partial interest in the Black Creek Property by way of constructive trust, or damages, on the basis of unjust enrichment.

[14] Issues (a) and (b) both turn predominantly on the resolution of one factual issue: whether a promise (or offer) was made by Thom to the plaintiffs.

[15] I will first address some principles that inform my assessment of evidence before explaining why I have determined that the plaintiffs have failed to prove, on a balance of probabilities that a promise (or offer) was made by Thom to them.

[16] Although that factual finding is sufficient to deal with the claim in both proprietary estoppel and contract, I will then address some additional problems with the claim in proprietary estoppel. Finally, I will explain why I have determined that Raymond and Lynn are not entitled to any remedy based on unjust enrichment.

Legal Analysis

Assessment of Evidence

[17] My role as the trier of fact is to assess the entirety of the evidence bearing in mind the civil burden of proof on a balance of probabilities.

[18] As noted at the outset, the plaintiffs claim that Thom promised that he would gift the Black Creek Property to Meeka on certain conditions. Each of Meeka, Raymond and Lynn gave evidence about the alleged conversations between the four of them where this alleged promise was made and Thom's conditions were laid out. They have each given evidence, as has Mr. Gabler, about subsequent conversations in which this alleged promise was reiterated.

- [19] Thom was deceased at the time this action was initiated and therefore unable to give direct evidence about what occurred.
- [20] The plaintiffs and Mr. Gabler claim that they were the only people present with Thom when these promises were made.
- [21] Thus, none of the other witnesses who gave evidence at the trial can speak directly to whether these alleged assurances were made.
- [22] This critical contested factual issue depends upon my assessment of the credibility and reliability of the evidence presented at trial, and especially the credibility and reliability of Meeka, Raymond, Lynn and Mr. Gabler's evidence.
- [23] Credibility relates to the witness's veracity and sincerity, that is, his or her willingness to speak the truth as the witness believes it to be. Reliability relates to the actual accuracy of the witness's testimony. The accuracy of a witness's testimony involves considerations of the witness's ability to accurately observe, recall and recount the events in issue. A witness whose evidence on a point is not credible cannot give reliable evidence on that point. The evidence of a credible, that is, honest witness, may, however, still be unreliable: *S.B.F. v D.G.F.*, 2022 BCSC 2231, at para. 29.
- [24] In *Bradshaw v. Stenner*, 2010 BCSC 1398, at para. 186, Justice Dillon set out a non-exhaustive list of factors the court may consider when assessing credibility:
- [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), 1919 CanLII 11 (SCC), 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*, 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354 (B.C.C.A.) [*Farnya*]; *R. v. S.(R.D.)*, 1997 CanLII 324 (SCC), [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 (*Farnya* at para. 356).
- [25] Credibility and reliability are not all or nothing concepts. The trier of fact may believe some, all, or none of a witness's evidence and attach different weights to different part of their evidence: *L.M. v. K.M.*, 2022 BCSC 689, at para. 276.

[26] Perfection is not required of witnesses. A witness can be both credible and reliable despite minor inconsistencies or other flaws in their testimony: *Piga v. Uffelman*, 2022 BCSC 983, at paras. 19-20.

[27] With those principles in mind, I turn to a detailed consideration of the representations said to be made by Thom including the circumstances surrounding those alleged representations.

Was a promise (or offer) made by Thom to the Plaintiffs?

[28] The plaintiffs are related. Lynn and Raymond are married, and Meeka is their daughter.

[29] Thom was related to the plaintiffs through a marriage-like relationship with Lynn's late half-sister, Patricia Lamoreux.

[30] Ms. Lamoreux was also Meeka's godmother.

[31] Meeka was introduced to Ms. Lamoreux by her mother over the phone when she was 14 years old. At the time, Ms. Lamoreux and Thom were living together in a romantic relationship in Vancouver, BC. Meeka was living in rural Ontario with her parents, Raymond and Lynn.

[32] Ms. Lamoreux and Thom invited Meeka to travel to Vancouver to visit. She spent two weeks in Vancouver with them and visited Vancouver Island.

[33] Following her visit to British Columbia, Meeka stayed in touch with Ms. Lamoreux by phone. When Meeka was 16 years old, Ms. Lamoreux and Thom took her on a trip to Hawaii, United States, for approximately ten days.

[34] When Ms. Lamoreux turned 50 years old, and Meeka was 18 years old, Ms. Lamoreux invited Meeka on a girl's trip to Cancun, Mexico, for approximately ten days.

[35] During each of these vacations, Ms. Lamoreux paid for Meeka's travel.

[36] In 2006, Meeka and her then boyfriend, moved from Ontario to British Columbia so that Meeka could attend a two-year course of studies at Malaspina College in Nanaimo, British Columbia. Thom and Ms. Lamoreux continued to live in Vancouver at this time.

[37] In 2007, Thom asked Raymond to move from Ontario to British Columbia to assist with the construction of a new home at Merville BC ("Merville Property"). Raymond had experience with concrete construction. Raymond and Lynn owned two properties in Ontario at the time. They listed their Ontario properties for sale and moved from Ontario to British Columbia.

[38] About a month before Raymond started working at the Merville Property, Nathan started working there. During the construction, Nathan lived in a recreational vehicle ("RV") provided by Thom at the Merville Property.

- [39] In 2008, Ms. Lamoreux and Thom purchased the Black Creek Property as joint tenants and moved there while they constructed a home at the Merville Property.
- [40] During the construction, Raymond and Lynn also lived in a RV provided by Thom at the Merville Property. Eventually, Raymond and Lynn purchased their own RV and both Lynn and Raymond testified that Thom and Ms. Lamoreux disapproved of this purchase.
- [41] Mr. Risser also assisted with construction of the Merville Property.
- [42] From 2008 until they moved into the Merville Property in 2009, Thom and Ms. Lamoreux hosted gatherings at the Black Creek Property. The plaintiffs, Ms. Lagos, Ms. Zahara and Nathan were all present at those gatherings. Meeka described this as a very happy time during which everyone was very close.
- [43] Despite that, even at this time, there was some friction between Lynn and Thom. Meeka allowed that Lynn and Thom were both very opinionated and would get into debates. Lynn testified that she and Thom were "frenemies". That is, they were friends, but they disagreed about a lot of things and would debate things early in their relationship. She described an interaction wherein she and Thom had a disagreement, and he said, "I don't know why you don't believe me I'm an engineer and you're just a " and she offered "office clerk". She described this disagreement as the beginning of the end. She clarified this is when Thom started showing his true colours.
- [44] In or around 2009, Meeka graduated from her studies at Malaspina College and she and her then boyfriend moved to Vancouver so that Meeka could work at the Pinnacle Marriott Hotel.
- [45] After her move, Meeka stayed in touch with Ms. Lamoreux by phone. Meeka testified that when her schedule and budget allowed, she would take the ferry over to visit but this was difficult because she had student debt.
- [46] Also in 2009, Ms. Lamoreux and Thom moved into the Merville Property, and they rented out the Black Creek Property.
- [47] By this point in time, there was also some friction developing between Lynn and Ms. Lamoreux. One day, Ms. Lamoreux and Lynn were sitting on the back deck at the Merville Property and Ms. Lamoreux said to Lynn that there was only one thing ruining the perfect view and that was Raymond and Lynn's RV.
- [48] Lynn testified that she and Raymond were already looking for their own home at that time and shortly after, in 2010, the construction on the Merville Property was complete, Raymond's formal employment with Thom ended, and Lynn and Raymond purchased their home located in Courtenay, BC (the "Courtenay Property"). Both Lynn and Raymond testified that Thom and Ms. Lamoreux disapproved of this purchase.

- [49] By 2010, Lynn testified, she was disillusioned, disappointed, and sad. She did not feel that Ms. Lamoreux accepted her for who she was and did not feel that she approved of her. She testified that she felt Ms. Lamoreux degraded her. Lynn also no longer got along with Thom.
- [50] Nathan moved back to Vancouver upon completion of construction at the Merville Property. He also stopped driving at this time due to medical issues. He would visit the Island between one and three times a year. He had weekly phone calls with Thom every Sunday evening at 7:00 PM. I found Nathan to be a straightforward witness, and I accept his evidence that despite living in different cities and having infrequent visits, he and Thom were good friends who bantered and joked around. Nathan was also very close with Ms. Lamoreux.
- [51] Meeka testified that she stayed in Vancouver for approximately two years, including during the 2010 Olympics. In 2011, following the Olympics, she and her then boyfriend moved to Montreal. At some point they became engaged to be married.
- [52] It was in or around the time when Meeka was being transferred to Montreal, that she learned that Ms. Lamoreux had been diagnosed with cancer. Meeka did not return to British Columbia to visit Ms. Lamoreux during this period, and she testified that Ms. Lamoreux did not want to see her while she was sick. Nathan, Ms. Lagos and Lynn all visited Ms. Lamoreux in the hospital during the course of her illness.
- [53] Following her transfer, Meeka kept in touch with Ms. Lamoreux by phone or email. The frequency of their contact was sometimes a couple times a week, and sometimes three to four weeks would pass without speaking.
- [54] Meeka testified that during these phone calls they talked about their lives. Meeka conveyed to Ms. Lamoreux how happy she was to have spent time with her at the Black Creek Property. Meeka testified that Ms. Lamoreux somewhat implied that she wanted to leave the Black Creek Property to Meeka. Meeka could not recall details of that conversation. She conveyed that it was a "blur". Given her limited recollection of what was actually said, I did not find Meeka's evidence on this point to be reliable.
- [55] Lynn also testified that she had multiple conversations with Ms. Lamoreux in which Ms. Lamoreux stated that she would love for the Black Creek Property to go to Meeka. Raymond testified that Lynn told him it was Ms. Lamoreux's idea that she wanted to keep the house and pass it down to Meeka and that he eventually heard her say the house was for Meeka.
- [56] On November 29, 2011, Ms. Lamoreux died. Meeka did not attend her funeral because of her schedule and her budget.
- [57] Ms. Lamoreux did not leave the Black Creek Property to Meeka. Instead, in September 2012, it was transferred from Ms. Lamoreux and Thom as joint tenants to Thom as the sole surviving joint tenant after he death.

- [58] Following Ms. Lamoreux's death, Meeka's student line of credit was paid off. Ms. Lamoreux was a co-signor on the loan and there was between \$8,000 and \$9,000 owing at the time. Meeka did not recall seeing Ms. Lamoreux's will. She was not sure but believed that Ms. Lamoreux had instructed Thom to ensure the line of credit was paid off.
- [59] Lynn was given one of Ms. Lamoreux's hats.
- [60] Ms. Zahara (who had been married to Ms. Lamoreux's late uncle) and Ms. Lagos (Ms. Zahara's daughter) each received \$10,000 from Thom upon Ms. Lamoreux's death which Thom said was a gift from Ms. Lamoreux. Nathan received \$12,000 with the same explanation.
- [61] Meeka testified that after Ms. Lamoreux was diagnosed with cancer, she asked Meeka to look in on Thom and make sure he was alright. Meeka testified that after Ms. Lamoreux died, she therefore called Thom as often as she could. At one point, they were speaking at least once weekly.
- [62] During the construction of the Merville Property, there was a plan that Ms. Zahara would move in there as she was a widower and living alone at the time. A self-contained suite was built for that purpose. When Ms. Lamoreux became ill, that plan was delayed. After Ms. Lamoreux's death, in or about April 2012, Ms. Zahara moved into the suite that had been built for that purpose at the Merville Property. The initial move was just for a trial period to see whether it worked for Thom and Ms. Zahara who were both widowed and living alone. Eventually, it became a permanent move. Ms. Zahara paid Thom rent. She remained in residence at the Merville Property at the time of trial.
- [63] In the summer of 2012, Thom invited Meeka to go on a month-long trip to Europe with him. Thom paid for everything. They flew first class to Europe and enjoyed many different attractions and nice meals. Meeka testified that during the second week of the trip, their relationship became romantic.
- [64] Thom invited Meeka to live with him at the Merville Property, and she agreed.
- [65] Meeka and Thom therefore arranged to meet Meeka's parents at the airport hotel in Vancouver in October 2012 to tell them the news. By all accounts, Raymond and Lynn were quite shocked and not pleased with the news. Raymond said very little and Lynn asked Meeka repeatedly if she was sure this is what she wanted to do. Meeka reassured her that this was her life, and this is what she was doing.
- [66] Thom was considerably older than Meeka. Lynn testified that she thought Thom was a creepy, dirty old man taking advantage of a young person. She testified that she believed Meeka was a naïve young woman. Raymond testified that he believed the relationship was inappropriate and wrong.

- [67] Thom told his son about the relationship. Nathan testified that he also thought the relationship was inappropriate. He testified that he was embarrassed for Thom. He believed Meeka was in the relationship for Thom's money. While he continued to talk to Thom every Sunday, he did not feel the urge to go visit too often while Meeka was living with him. Nevertheless, he continued having his weekly telephone calls with his father.
- [68] After telling her parents the news of her new relationship and life course, Meeka returned to Montreal, quit her job, and ended her relationship with her fiancé. She then moved to the Merville Property to live with Thom.
- [69] The alleged promises that underlie this action were made on a number of different occasions after that move that I will now describe.

Inconsistencies: The Initial Proposal

- [70] Meeka, Lynn and Raymond each gave evidence about Thom's alleged assurances that Meeka would receive the Black Creek Property when he died. Their evidence was inconsistent with each other in some important respects that I will describe. Some of the evidence was also internally inconsistent which gave rise to credibility concerns. I will therefore describe in detail the accounts by witness here.

Meeka's Evidence

- [71] As mentioned above, the Black Creek Property had been rented out since 2010.
- [72] In or around 2013, the then tenants at the Black Creek Property were friends of Thom named Alexei and Mella Aschenbrunner. They were paying approximately \$1,200 per month in rent. They decided to move out due to a decline in Alexei's health and Mella's care giving responsibilities.
- [73] Meeka testified that she and Thom had a number of conversations about what to do with the Black Creek Property after that.
- [74] Meeka testified that Thom did not want to have strangers living at the Black Creek Property and did not want to deal with tenants. He was thinking of selling the property. Meeka testified that she explained and reaffirmed how many happy memories she had there with Ms. Lamoureux and that the Black Creek Property meant a lot to her. Meeka testified that she told Thom what Ms. Lamoureux had said to her before she died about keeping the Black Creek Property around for Meeka.
- [75] Meeka testified that Thom then said that he wanted her to have the Black Creek Property when he died. Meeka testified that Thom also decided that in order for that to happen:

- a) He wanted her parents to live at the Black Creek Property, look after it, and make improvements to it so that when it came time for her to move into the house, it would be well-maintained, modern, and liveable. In cross-examination she added that they had to pay expenses like insurance and property taxes.
 - b) Her parents would have to sell the Courtenay Property and not purchase any other pieces of land or property so that they would be solely focussed on the Black Creek Property.
- [76] Meeka testified that she and Thom did not discuss the question of why wait until after his death to make the arrangements with respect to the Black Creek Property. On cross-examination she testified that she did not recall having that discussion.
- [77] Meeka testified that she and Thom discussed these issues over the course of multiple conversations over weeks or a month at least. She testified that she and Thom worked out all these details before they went to see her parents at the Courtenay Property and her parents were not part of those conversations. She testified that she did not give her parents any advance notice about Thom's proposal. She testified that she never reached out to her parents to see if they were interested in moving. She did not send them any texts or emails about this issue.
- [78] Meeka testified that she and Thom then went to the Courtenay Property and that she left it up to Thom to raise the proposal with her parents.
- [79] She testified that Thom spearheaded that conversation and explained to Lynn and Raymond in her presence that he wanted to leave the Black Creek Property to her upon his death, but he wanted them to live there in the meantime, not strangers.
- [80] She said that Thom told them they needed to sell the Courtenay Property and focus only on the Black Creek Property.
- [81] Meeka testified that she could tell from their facial expressions that her parents were a little taken aback and shocked. Meeka testified that they did not say much. Thom asked what their thoughts were and whether they would entertain it. They said this is something that they needed to discuss just the two of them.
- [82] Meeka testified that no one kept any notes of this conversation and there was no follow up by text or email about it.
- [83] Meeka testified that a week or so later, her parents came to see her and Thom at the Merville Property. The only people present were her, Thom, Raymond and Lynn.
- [84] Meeka testified that during this second conversation, her parents agreed to sell the Courtenay Property and move into the Black Creek Property. Meeka testified that she could not recall any changes to the proposal between the initial discussion and her parents' acceptance at the Merville Property.

- [85] Meeka's evidence about these two important meetings was of a very general nature and lacking in detail. She acknowledged that she could not say word for word what was said.

Lynn's Evidence

- [86] Lynn testified that Thom and Meeka came over for a visit at the Courtenay Property and that after some preliminary niceties, Thom said he needed to talk with them. Lynn testified that there had been no prior mention of the possibility of Lynn and Raymond moving into the Black Creek Property.
- [87] Lynn testified that Thom led the discussion and said that Mella and Alexei were soon moving out of the Black Creek Property and he needed someone in there that he could trust, rely on, and depend on to keep the property in good condition.
- [88] Lynn testified that Thom did not want to worry about renting the Black Creek Property to tenants. He stated that he did not want to have to worry about anything at all. Lynn testified that Thom then asked if she and Raymond would move into the Black Creek Property.
- [89] Lynn testified that they just sat there and that she said they could not afford to live there and in Courtenay at same time. Lynn testified that Thom then said to sell the Courtenay Property. Lynn testified this was an off the cuff remark and that there was no mention of whether or not they could have another property outside of the Black Creek Property.
- [90] Thus, Lynn's account of the conversation is inconsistent with Meeka's (and Raymond's as I will soon describe) in that Meeka described the need to sell the Courtenay Property as a condition that emanated from Thom, that was determined in advance of the meeting, and that was motivated by his concern that the plaintiffs focus solely on the Black Creek Property. Meeka did not describe it as an off the cuff remark made in response to an affordability concern raised by Lynn. Meeka also did not describe this part of the conversation. I consider this to be an important inconsistency because it goes to the substance of the proposal that is said to have been made.
- [91] In direct examination, Lynn testified that Thom communicated that Lynn and Raymond did not have to worry about rent, but did have to pay taxes, insurance, and utilities. However, in cross-examination she testified that rent never came into the discussion. She testified that she simply told Thom that they could not afford to maintain both properties at the same time. Lynn also gave inconsistent statements at her examination for discovery at different points about whether or not rent came into the discussion. On this issue, Lynn's testimony was internally inconsistent and gave rise to credibility and reliability concerns.
- [92] Lynn testified that Thom said if they did not move in, he was going to sell the Black Creek Property and Meeka would not get it. Lynn testified that they told Thom they had to think about it. Meeka did not raise the sale of the Black Creek Property as a topic that was discussed with her parents in her evidence.

- [93] Lynn testified that the question of who would pay for upkeep of the Black Creek Property was not really discussed. Lynn testified that she and Raymond assumed they would be paying for it because they would be taking care of the property for the future. Again, on Meeka's version, the requirement to make improvements to the property was a condition that Thom settled on before the meeting.
- [94] Lynn acknowledged in cross-examination that she did not recall the conversation verbatim and did not recall the date or time that it occurred.
- [95] Lynn testified that a few days later, she and Raymond went over to the Merville Property to talk to Thom about the proposal. She testified that she and Raymond sat down and said they would put the Courtenay Property up for sale and move into the Black Creek Property. Lynn testified that they said they would take care of the Black Creek Property but that they wanted to make sure that Thom left it to Meeka when he died. Lynn testified that Thom said absolutely "it's her house".

Raymond's Evidence

- [96] Raymond testified that on the day the proposal was made, Thom called in advance to ensure he was home but gave no warning about what he wanted to discuss.
- [97] He testified that Thom and Meeka came to the Courtenay Property and Thom took the lead in the discussion. Raymond testified that Thom stated that he wanted Raymond and Lynn to move into Black Creek.
- [98] Raymond testified that the Black Creek Property was not empty yet, but Mella and Alexei were going to move out. It was anticipated that it would be empty in the next two to three months.
- [99] Raymond testified that Thom stated that he wanted the Black Creek Property to go to Meeka.
- [100] Raymond testified that Thom wanted Raymond and Lynn to do all the upkeep on the property so that when she was ready to go in it, it would be ready for her. This is inconsistent with Lynn's evidence.
- [101] Raymond testified that Thom did not want the responsibility of maintaining the house and he did not want to worry about the house.
- [102] Raymond testified that Thom told him that he wanted him to sell the Courtenay Property so that they could pay all their attention to the Black Creek Property. As I have noted, this is an important inconsistency between Raymond and Meeka's evidence on the one hand, and Lynn's on the other.
- [103] Raymond testified that the idea of him and Lynn paying rent at Black Creek was never raised. As noted, on some occasions Lynn testified there was a specific discussion about this and on others, no discussion.

- [104] Raymond testified that he and Lynn said that they had to think about it and that they would see Thom in a few days.
- [105] Raymond testified that within the week, he and Lynn went out to the Merville Property to communicate their decision to Thom. Meeka was there also. Raymond testified that he told Thom that they did not have a problem going up to the Black Creek Property but that they would like to keep the Courtenay Property. Raymond testified that Thom said "no I don't want you to have any ties to Courtenay" because there was not enough time to take care of both properties. Raymond testified that Thom said they could work, but if they were not in the Black Creek Property then he would sell the house and not worry about it. Raymond testified that they agreed to sell the Courtenay Property.
- [106] The issue about whether Raymond and Lynn asked Thom to keep the Courtenay Property at the second meeting is an important inconsistency between Lynn and Meeka's evidence on the one hand, and Raymond's evidence on the other because it goes to the substance of the proposal made.

Inconsistencies: Later Restrictions

- [107] Lynn testified that a few weeks after they moved into the Black Creek Property, she was sitting at her table looking at MLS listings. She testified that Thom came over and asked what she was doing, and she told him. She testified they were the only two people present. She testified that Thom asked her why she was looking at the MLS, and she said she was looking for fun and because she and Raymond might buy another house.
- [108] Lynn testified that Thom said, "if you buy another house, I'm going to sell this one and Meeka can't have it." Lynn testified that she asked about buying raw land and Thom said no because then they could move their RV onto it. He said it would be too easy for Raymond and Lynn to leave if they had something to go to. Lynn testified that she calmed Thom down and told him that she wanted the Black Creek Property to go to Meeka as he promised it would but needed to know this would be her forever home. Lynn testified that he said, "yes you will be here until you die" and so she and Raymond accepted that.
- [109] No other witness, including Raymond, has given evidence that Thom ever represented that his expectation was that Lynn and Raymond would be in the Black Creek Property forever until they died. This alleged communication is inconsistent with the evidence of other witnesses who testified that the proposal was that the Black Creek Property would go to Meeka upon Thom's death.
- [110] Lynn testified that she said something to Thom about renting the Courtenay Property out and that Thom said "no, you sell it, and you don't rent it out". She testified that he did not want them to have another property because then it would be too easy for them to leave.

- [111] In contrast, Raymond testified that he never considered renting out the Courtenay Property because renters skip out on rent and damage properties. Raymond testified that the possibility of renting out the Courtenay Property was never discussed.
- [112] The testimony of Lynn and Raymond could both be accurate on these accounts. Lynn may have raised the issue of renting out the Courtenay Property with Thom in Raymond's absence; however, I find it implausible that Lynn would explore renting out the Courtenay Property with Thom having not yet discussed it with her spouse and that she would not have told Raymond about this conversation. If she had already discussed it with Raymond and was aware of his adamant views against renting, I find it implausible that she would have raised it with Thom at all.
- [113] Raymond testified that during a subsequent conversation between him and Thom, after Raymond and Lynn had moved to the Black Creek Property, Thom came out to his garage to smoke. He testified that he and Thom were the only two present. Raymond testified that he told Thom he was thinking of buying a piece of property so that he could put his RV there so that later he and Lynn would have a spot. Raymond testified that Thom said he did not want them to do that because it would be too easy to move over there and leave the Black Creek Property unattended. Raymond testified that Thom said that if they moved, he was going to sell the Black Creek Property, so they stayed.

Inconsistencies: After Meeka and Thom Ended Their Romantic Relationship

Meeka's Evidence

- [114] Meeka testified that in or around the end of 2014, her relationship with Thom changed to a platonic relationship. Meeka testified that after her romantic relationship with Thom ended, they remained good friends. Meeka testified that they continued sharing their morning coffees and meals together and sharing ideas. She moved out of his bedroom and into a bachelor suite at the Merville Property.
- [115] Meeka testified that during her romantic relationship with Thom, he paid for all her expenses. He also provided her with a Visa with her name on it. He paid all the Visa bills. Meeka testified that Thom also paid for any classes she took during their relationship.
- [116] Meeka testified that after her romantic relationship with Thom ended, he continued to pay for her studies at Vancouver Island University until she completed her two-year course of study. He paid for her tuition and her books. Outside of school, he also continued to pay for her cell phone that was part of his family plan.
- [117] Meeka testified that while she was still living at the Merville Property but after the end of her romantic relationship with Thom, she asked Thom whether his intentions were still to have her parents live at the Black Creek Property and to eventually gift her the house when he died. Meeka testified that Thom said absolutely and that nothing had changed.

- [118] In April 2015, Meeka moved out of the Merville Property and into a new home in Nanaimo with Mr. Gabler who was, by this point in time, her boyfriend. Meeka testified that Thom gifted her a jeep wrangler when she moved out that she was able to drive for over ten years. Thom paid the transfer tax and replaced the battery in the vehicle. When she moved out, she paid for the general upkeep on the vehicle. Meeka testified that shortly after she moved out, she returned the Visa to Thom and that she had not used it since she moved out.
- [119] Meeka testified that a couple months after she moved out, she wanted to check in with Thom again about the Black Creek Property. Meeka testified that she visited Thom at the Merville Property, and she asked him again whether he still intended to leave the Black Creek Property to her when he passed. Meeka testified that she told Thom that if his intentions had changed, she needed to let her parents know so they could move out and he said, "nothing has changed" and "it is your house".
- [120] Meeka testified that there were two occasions when she talked to Thom about going to a lawyer to speak about a will and the Black Creek Property.
- [121] On one occasion, she was still living at the Merville Property, Thom told her that he planned to bequeath the Black Creek Property to her in a will. Meeka testified that she asked him if he had a will and he said it was something he was working on.
- [122] Meeka testified that she asked Thom a couple times about a will and whether he had anything in the works and he always said that he did. Meeka testified that these conversations about a will and plans were while she was visiting and they were very brief. She testified that she never really asked him about details about who the lawyer was that he was speaking to. Just whether he had things in order.
- [123] However, on a second occasion, much later when she was living in Nanaimo but before the COVID-19 pandemic, she spoke to Thom about the will and the Black Creek Property in particular. She testified that she learned that Ms. Zahara was to be a beneficiary under the will and that Ms. Lagos would be the executrix. She testified that Thom said that she was getting the Black Creek Property. Meeka also testified that Thom was estranged from his biological son Nathan but that he had made the will so it could not be contested by Nathan.
- [124] As I have set out above, I find that Thom and Nathan continued to have weekly phone calls throughout Thom's life. They were not estranged. Although Nathan disapproved of his prior relationship with Meeka, Thom and Nathan's relationship remained friendly throughout. I find it implausible that he would say he was estranged from his son in this context and especially after his relationship with Meeka had ended.
- [125] Meeka testified that she did not like discussing wills with Thom because that meant they were talking about him being dead and she could not have that conversation without crying.

- [126] Meeka testified that outside of talking about a will, she did discuss the Black Creek Property with Thom from time to time when her parents wanted to make improvements to the property. Meeka testified that she would tell him about the planned improvements and ask him what he thought, and his answer was it is great or why ask me it is your house. Meeka testified that he trusted her parents' taste.
- [127] Meeka testified that between March 2020 and Thom's death in July 2022, she would bring up the Black Creek Property and ask whether it was still Thom's intention to leave it to her when he had died. She testified that whether it was or not she wanted to know to make sure her parents were not going to be in the position they were in today. Meeka testified that Thom never told her that he had changed his mind.
- [128] Meeka testified that all her communications with Thom and her parents about the Black Creek Property were oral, never in writing, because of the sensitivity of the topic. As I will explain in more detail below, I find it implausible that if any such agreement was made, there was not a single text or written document about it.

Lynn's Evidence

- [129] Lynn testified that whenever she and Raymond were going to do work on the Black Creek Property, they would mention it to Thom, and he would say "it is your house, do what you want."
- [130] Lynn testified that Meeka and Thom came to the Black Creek Property one day and sat down and said they were not a couple anymore. Lynn testified that she said "OK" and asked what was happening. Lynn testified that Meeka said she was staying in a suite at the Merville Property and Thom was living in the main house and they both said they were ok.
- [131] Lynn testified that she then asked, "what happens with us?" Lynn testified that she was referring to her and Raymond and their position at the Black Creek Property. Lynn testified that it was not a huge worry that they would have to move out, but it was a concern to know whether anything in their agreement had changed.
- [132] Lynn testified that Thom said, "what do you mean?" Lynn testified that she said that he and Meeka had been in a relationship and now they had broken up, that he had said Meeka was going to get the Black Creek Property and they were living in it. Lynn testified that Thom said nothing had changed.

Raymond's Evidence

- [133] Raymond testified that whenever he was doing projects on the Black Creek Property he would check in with Thom and Thom would say "just do it, it's your house".

[134] Raymond testified that he and Lynn were invited to the Merville Property and as they were eating supper, Meeka told them that she and Thom were separating but that Meeka was staying in a suite at the Merville Property, and everything was amicable. Raymond testified that Thom said the arrangement he had made with Meeka as far as her having the house was still in place, so the Black Creek Property was there for Meeka when he died.

[135] Raymond's account of this meeting is substantially different from Lynn's. This conversation was not described by Meeka.

Joerg Gabler's Evidence

[136] Joerg Gabler is now Meeka's spouse.

[137] Mr. Gabler works as an instructor at Vancouver Island University, formerly Malaspina.

[138] Mr. Gabler testified that he first met Meeka in or around 2008 when she was a student at Malaspina in the Hospitality Management Program. He was one of her instructors at the time.

[139] Mr. Gabler testified that they reconnected years after she graduated in or around September 2014. They messaged for a while and decided to meet up in January 2015.

[140] Mr. Gabler testified that at this time Meeka was living at the Merville Property with Thom but living in her own suite. He testified that he met Thom towards the end of January 2015. Mr. Gabler testified that Thom was introduced to him as Meeka's uncle. Mr. Gabler testified that he did not learn about Meeka's romantic past with Thom until this litigation was initiated.

[141] Mr. Gabler testified that he overheard a couple of conversations between Thom and Meeka about the Black Creek Property.

[142] Mr. Gabler testified that the first conversation occurred sometime between 2015 and 2018. Mr. Gabler testified that Thom was approximately 66 or 67 years old.

[143] Mr. Gabler testified that he, Meeka and Thom were in the main part of the Merville Property. Mr. Gabler testified that they were watching television and having a casual conversation. Meeka and Thom were discussing renovations that Meeka's parents were doing at the Black Creek Property and Thom said that those renovations would benefit Meeka as she would not have to do them later when Thom died and she took ownership of the Black Creek Property.

[144] Meeka did not describe this conversation although, according to Mr. Gabler, she was present at the time.

- [145] Mr. Gabler testified that he understood from the conversation that Thom owned the Black Creek Property and Meeka's parents lived there. He understood that Lynn and Raymond were occupying it to ensure that Thom did not have to worry about maintaining it, or doing upkeep, or paying taxes, or renting it out. He understood that Thom was going to hold the Black Creek Property in Meeka's interest.
- [146] Mr. Gabler testified in chief that Thom said that if her parents were not keeping the house for her, he would have sold it a long time ago. Mr. Gabler testified that Thom said that he could sell it now and pass on the money later, but then he would have to deal with capital gains tax because it was not his primary residence. However, in cross-examination, Mr. Gabler testified that there was never any discussion about selling the Black Creek Property. He testified that Thom mentioned he was glad her parents were in the house. Mr. Gabler then testified that he did not recall whether or not Thom had mentioned selling the Black Creek Property. Mr. Gabler then testified that it was not correct that Thom had stated that he would need to pay capital gains tax upon the sale of the Black Creek Property. This evidence raised concerns about Mr. Gabler's reliability and credibility. It was detailed yet his direct evidence was inconsistent with his evidence on cross-examination. His evidence was also inconsistent with Meeka's evidence because, as I have noted above, Meeka denied that she had a discussion with Thom about why her interest in the Black Creek Property had to await his death.
- [147] I find it implausible that such a conversation, in any form, would have occurred between Thom and Meeka in Mr. Gabler's presence in light of all the other facts of this case. First, there is no evidence that Thom believed his death was imminent. Thus, there would be no reason for him to believe that any improvements made to the Black Creek Property would not need further updating at the time of his death. Second, I find it implausible that Thom would so freely discuss the alleged arrangement in the presence of Mr. Gabler, a relative stranger who was not even aware of the nature of his relationship with Meeka, when he had not discussed the arrangement at all with his closest confidant, Ms. Lagos, or his own son.
- [148] Mr. Gabler testified that he was present for another conversation about the Black Creek Property in or around 2018. The only people present were him, Meeka and Thom. However, Mr. Gabler testified that his daughter may have been in the background with a friend. Mr. Gabler testified that Thom was at his computer looking at drawings that Thom had made of future plans for Meeka at the Black Creek Property. Mr. Gabler testified that the plans included opening up the kitchen area and taking out a wall that divided the living room from the dining room to make it more open concept. Mr. Gabler testified that it also included renovating the bathrooms.
- [149] Mr. Gabler testified that Thom said he had finished his will and that Ms. Lagos would be the executor. Mr. Gabler testified that Thom said Meeka would be taken care of with the Black Creek Property. In direct examination, Mr. Gabler testified that Thom said, "that had not changed". However, in cross-examination he stated that Thom said the property had been willed to Meeka. Mr. Gabler testified that Thom said that Nathan would not oppose the will.

Mr. Gabler testified that Thom did not explain what he meant, nor did they see his will. Mr. Gabler testified that Thom did not mention any other beneficiaries in the will. He did not mention Ms. Zahara or Mr. Risser. This contrasts with Meeka's evidence in which she testified that Thom advised that Ms. Zahara was a beneficiary.

- [150] Mr. Gabler testified that during these conversations, Thom was speaking to Meeka, not him, and reassuring her that she would be taken care of and nothing had changed.
- [151] Mr. Gabler testified that on another occasion, Thom said to him that he might want to redo the flooring and that the roof at the Black Creek Property might need to be replaced when they took over.
- [152] Again, I find the context of these alleged conversations to be implausible because of the relationship between Mr. Gabler and Thom. I also find it implausible that Thom was concerned about ensuring Meeka was taken care of given that during these conversations, Meeka was living with Mr. Gabler in a home that he owned. Her housing security was not in question.

Firmness of Memory and Influence of Interest

- [153] In addition to the problems of inconsistency that I have outlined above, there are other reasons to doubt the reliability and credibility of the evidence of these witnesses.
- [154] As I have noted, both Meeka and Lynn gave evidence that they did not have a firm memory of the words spoken during the first two critical meetings when Thom is alleged to have made the proposal and when Lynn and Raymond are said to have accepted it.
- [155] Despite Meeka's evidence about the conditions that Thom had decided upon in advance of the initial meeting, those conditions are not completely reflected in any witness's account of what was said at the initial two meetings. No witness testified that Thom indicated at the initial two meetings that Lynn and Raymond could not purchase any other pieces of land or property as a condition of the proposal.
- [156] Each of these witnesses stands to benefit from a finding that Thom made promises that the Black Creek Property would go to Meeka upon his death. Meeka stands to obtain the Black Creek Property. Meeka is Mr. Gabler's spouse. Lynn and Raymond would benefit both by ensuring that their daughter receives the Black Creek Property, and potentially because Lynn testified that they would be permitted to stay there until they die.

Lack of Documentation and Draft Will

- [157] There is also not a single document referring to or alluding to the alleged agreement between Thom and the plaintiffs. That is striking because, by Meeka's own admission, Thom had many computers and spent quite a bit of time on some of them. He communicated by email and was also a frequent texter. He kept many written and electronic records including a paper record of a dated and relatively minor loan.
- [158] There is evidence that Thom and Raymond exchanged text message about the Black Creek Property. However, those messages only refer to dropping off money for property taxes and insurance. They are transactional and do not evince a close relationship. That stands in contrast, for example, to the text messages between Thom and Ms. Lagos which evince a close relationship.
- [159] I accept the evidence of Nathan, Ms. Lagos, and Ms. Zahara, that Thom did not ever advise any of them of any promise that the Black Creek Property would go to Meeka upon his death. That is also unusual because he did discuss estate planning to some extent with both Nathan and Ms. Lagos.
- [160] Thom's texts with Ms. Lagos, who I accept was his closest confidante, provide no indication that he had made any promise or agreement related to the Black Creek Property. Those texts suggest Ms. Lagos' view that Raymond and Lynn, by living rent free in the Black Creek Property, were taking advantage of Thom's generosity and that he was free to end that state of affairs, including by making the Black Creek Property available for others to use. These were private unguarded text exchanges between close friends. If Ms. Lagos' assumptions were incorrect, I expect Thom would have said so. He did not.
- [161] Despite that Thom did communicate in writing, including on occasion with Meeka, Meeka testified that she only communicated with him about this topic in person, by phone, or through facetime.
- [162] As well, Thom's own documentary evidence does not corroborate these witnesses' accounts.
- [163] According to a report from Mr. Miller, Thom's computers were reviewed and there was no documentation relating to the claims of the plaintiffs.
- [164] As well, the Draft Will undermines the notion that Thom considered himself to be under any obligation to gift the Black Creek Property to Meeka.
- [165] The Draft Will was not signed. No order was obtained curing that will. However, and although it is not determinative of the issues raised in this case, I accept it and the testimony of Thom's lawyer, Mr. Havelaar, as some evidence of Thom's intentions at the time he communicated with Mr. Havelaar.

- [166] Mr. Havelaar is a lawyer who practices law in Campbell River, BC. The scope of his practice includes the preparation of wills.
- [167] Mr. Havelaar's evidence concerning his conversation with Thom and the Draft Will are necessary evidence because Thom is dead and unable to give direct testimony. It is also reliable because Mr. Havelaar is a professional lawyer who took contemporaneous notes of his call with Thom and prepared the Draft Will based on the instructions he received.
- [168] While there is no evidence that Mr. Havelaar reviewed the Draft Will with Thom, or that Thom signed it, Mr. Havelaar's evidence is admissible as evidence of Thom's intentions at least on the date he spoke to Mr. Havelaar.
- [169] Mr. Havelaar testified that Thom personally contacted him by phone to discuss his will. Mr. Havelaar set up a lengthier phone appointment for November 19, 2021.
- [170] Although he had limited present day recall of that phone call, Mr. Havelaar took notes. Mr. Havelaar's notes reflect that he collected biographical information such as Thom's full name, date and place of birth, and address. He also had notes of people who might have a wills variation claim. For example, he noted that Thom's spouse was deceased and that he had one son, Nathan, who was in his 40s. Mr. Havelaar testified, and I accept, that he would have advised Thom about wills variations before moving on to the information Thom would like in the will.
- [171] Mr. Havelaar testified that he did not have any concerns about Thom's capacity.
- [172] Mr. Havelaar noted that Thom wanted Ms. Lagos to be his executor.
- [173] Each of Meeka, Mr. Gabler, and Nathan testified that Thom told them he was considering appointing Ms. Lagos to be the executor of his will.
- [174] Thom told Nathan that he had asked Ms. Lagos to serve as his executor and asked whether Nathan approved. Nathan testified that he was surprised and a bit concerned as he did not know Ms. Lagos. However, he did not express objection to Thom.
- [175] Ms. Lagos likewise testified, and I accept, that it was Thom's express wish that she be appointed executor of his will.
- [176] Mr. Havelaar then noted a list of beneficiaries as follows:
- 50% Nathan Ecker (son, Vancouver)
 - 30% Kathleen Lagos (cousin, [Campbell River])
 - 10% Helen Zahara (Kathleen mom, Merville)
 - 5% Steve Risser (Merville, friend)
 - 5% Meeka Burrell (Nanaimo, wife's goddaughter)

- [177] I earlier mentioned that Mr. Risser had assisted with the construction of the house at the Merville Property. However, by the time this conversation with Mr. Havelaar occurred, Mr. Risser was living in the home at the Merville Property. He did not pay Thom rent but performed services for Thom. The evidence led demonstrates that his relationship with Thom had become one of close friendship making him a natural object of Thom's will.
- [178] Mr. Havelaar noted that Thom's main asset was the Merville Property. There is evidence in the record before me that the Merville Property was listed for sale at the time of trial for \$4,500,000.
- [179] Mr. Havelaar noted that Thom had deferred property taxes of approximately \$150,000 on the Merville Property. Mr. Havelaar noted Thom's instructions that the proceeds of the sale of the Merville Property should go to all five beneficiaries.
- [180] Mr. Havelaar also noted there was a second property, the Black Creek Property. He noted "Meeka's parents live there".
- [181] Mr. Havelaar testified that he did not recall further conversation about Meeka's parents living at the Black Creek Property. However, Mr. Havelaar testified that he believed he asked Thom if they had any legal interest in the Black Creek Property and received instructions that they did not. Mr. Havelaar fairly acknowledged, though, that he could not be certain about that. I place no weight on Mr. Havelaar's belief in this respect.
- [182] However, it is clear from Mr. Havelaar's notes that Thom did not report that Meeka's parents had any particular interest in the Black Creek Property. That is because Mr. Havelaar noted Thom's instructions that the proceeds of the sale of the Black Creek Property should be distributed 50/50 between Nathan and Ms. Lagos.
- [183] Mr. Havelaar testified that he did recall specifically that Thom wanted the properties sold and the proceeds distributed. Part of the reason for this instruction, he testified, was because of the substantial tax liability on the Merville Property.
- [184] Mr. Havelaar noted Thom's bank accounts. He noted that Thom wanted his accounts, including his Retirement Income Fund ("RIF"), to be distributed 50/50 between Nathan and Ms. Lagos.
- [185] He took note that Thom's intention was that his executor would not take a fee in addition to the substantial gift.
- [186] Mr. Havelaar noted Thom's instructions that his remains be cremated, that his ashes be mixed with those of Ms. Lamoreux, and scattered on the Merville Property. He also set out that the original will would be stored with his law firm and an estimate of fees for preparation of the will.

- [187] After taking these notes, Mr. Havelaar testified that he would have provided his notes to his assistant to prepare a draft will for his review and correction. He also wrote an e-mail to Thom the same day saying that he would send a draft will when it was ready.
- [188] Mr. Havelaar testified that he did not recall speaking to Thom again after November 19, 2021.
- [189] Mr. Havelaar testified that he did review a draft will that accorded with the instructions he received from Thom and his legal assistant e-mailed a draft to Thom on December 8, 2021.
- [190] Mr. Havelaar's office followed up with Thom on a number of occasions in an effort to set an appointment to go over the Draft Will and get it signed. However, Thom did not respond.
- [191] There is evidence of additional communications between Ms. Lagos and Mr. Havelaar's office. However, Mr. Havelaar testified that he was either not made aware of these communications or that he did not recall them. Even if they were admissible as evidence of Thom's intent, these communications would not evince any intent to leave the Black Creek Property to Meeka. In that sense, they do not materially change or advance the analysis of whether Thom made a promise to the plaintiffs, nor do they change the complexion of whether or not he was under the impression that he had. I will not discuss them further.
- [192] Mr. Havelaar testified that he never met Thom in person and that he would always review a full draft will with the client prior to signing on the date of the signing appointment. He testified this review would occur with the will maker only and an independent witness from his office. Mr. Havelaar testified that if there was some suggestion of influence, he might have taken additional precautions. Mr. Havelaar testified that drafts are prepared for discussion purposes. He also agreed that it was important to meet the client in person to assess capacity and influence.
- [193] I accept that this was only a Draft Will that was for discussion purposes. Nevertheless, the Draft Will, Mr. Havelaar's notes, and testimony suggest that Thom himself did not consider that he was under any obligation to Meeka or her parents with respect to the Black Creek Property.
- [194] When asked to consider the extent of his assets for the purpose of disposing of them, Thom had an appreciation of the claims of persons who are the natural objects of his estate. Thom had a fulsome list of persons who would be likely to inherit, and they inherited directly from his most valuable asset, the Merville Property.
- [195] His list of assets was specific, and he specifically addressed the Black Creek Property. He turned his mind to the fact that Meeka's parents lived there and determined he would instruct that it be sold. He did not instruct that sale be delayed during Raymond and Lynn's lifetime or that the proceeds be gifted to Meeka. He instructed that they be divided between his son and his close friend, Ms. Lagos. If he believed that he had an obligation towards Meeka or her parents, even if he wanted to resile from that agreement, one would have expected him to seek advice about that from his own lawyer.

Unreasonableness and Implausibility of Story

- [196] There are also several features of the plaintiffs' stories that are unreasonable or unlikely.
- [197] Why would Thom insist that Raymond and Lynn sell the Courtenay Property? Several rationales have been advanced by the plaintiffs.
- [198] Meeka and Raymond testified that Thom wanted the plaintiffs to be solely focussed on the Black Creek Property. However, that is unlikely because there were no immediate work requirements for the Black Creek Property. Thom had hired people to do some updates just before Lynn and Raymond moved in. He had not left those updates to Lynn and Raymond to do. While Lynn and Raymond undertook additional improvements, as I have discussed above, many of those were cosmetic in nature. Others were work projects to accommodate their particular needs and wants such as a hot tub, a nicer kitchen, and workspaces. I cannot conclude they were undertaken for Thom's benefit, or even Meeka's.
- [199] With respect to the Courtenay Property, it is not apparent how holding a property that they already owned and had recently renovated would be a distraction from the Black Creek Property even if there was work to be done at the Black Creek Property. There would be little work required to hold the Courtenay Property as it was recently renovated and in good condition. It is even less apparent why holding onto it would be a distraction when one considers that Raymond was adamant that he would not have tenants in the Courtenay Property. In those circumstances, the Courtenay Property could have been a very low maintenance, empty asset.
- [200] Thom's apparent insistence that Raymond and Lynn be solely focussed on the Black Creek Property becomes even less plausible when one considers that Thom is not alleged to have imposed any restriction on Raymond and Lynn working full time outside of the home. Both did so for some periods of time. Lynn had some health issues that limited her work during certain periods.
- [201] Another rationale put forward for this condition was that Thom felt if they held the Courtenay Property (or any other property including bare land), it would be too easy to leave the Black Creek Property and/or that he wanted them to have no ties to Courtenay. This rationale is improbable. Lynn and Raymond owned the Courtenay Property when they were offered the opportunity to move into the Black Creek Property. They chose to move. The evidence before me is that Lynn had always liked the Black Creek Property and it was a much more valuable home in a nicer neighbourhood than the Courtenay Property. It was also only a short drive from Courtenay. It is not a move that would necessarily have severed all ties to Courtenay.
- [202] It is also implausible that if Thom intended to pass the Black Creek Property to Meeka upon his death, he would not have simply put her on title during his lifetime. As I have pointed out above, Ms. Lamoreux was on title to that property as a joint tenant during her lifetime. Thus, this was a legal structure Thom was familiar with. Thom also did take steps to put

Meeka on title to a safety deposit box during the course of their relationship with the instruction that she could access it after he passed. He was sufficiently sophisticated and organized to make such arrangements. It is implausible he would not have done so with respect to the Black Creek Property.

Conclusions

[203] In light of all of the difficulties I have explained above, I cannot find on a balance of probabilities that Thom made the promises or offers alleged by the plaintiffs.

[204] That conclusion is sufficient to ground my ruling in respect of both the claim founded in proprietary estoppel and contract.

Proprietary Estoppel

[205] However, if I am wrong about that, there are additional problems with the claim in proprietary estoppel.

[206] Proprietary estoppel is an equitable doctrine which can be used as the basis for a cause of action.

[207] In order to establish proprietary estoppel, it is the plaintiffs' onus to establish:

- (1) a representation or assurance was made to the claimant, on the basis of which the claimant expected that they would enjoy some right or benefit over property;
- (2) the claimant relied on that expectation by doing or refraining from doing something, and their reliance was reasonable in all the circumstances; and
- (3) the claimant suffered a detriment as a result of their reasonable reliance, such that it would be unfair or unjust for the party responsible for the representation or assurance to go back on their word.

Cowper-Smith v. Morgan, 2017 SCC 61, at para. 15.

[208] A claim for proprietary estoppel begins with an assurance or representation in relation to an interest in land. The assurance can be made through words or conduct. As I have set out above, I have rejected that any such representation or assurance was made in this case. However, for the purpose of this analysis, I assume such a representation or assurance was made.

[209] In a claim for proprietary estoppel, reliance and detriment are frequently addressed together because the same facts often serve to establish both elements. However, a finding of reliance does not necessarily lead to a finding of detriment, and a finding of detriment is necessary because this is what gives rise to the unfairness: Sabey v. Rommel, 2014 BCCA 360 at para. 37; see also Ryan v Moore, 2005 SCC 38 at para. 69.

- [210] In the context of proprietary estoppel, reliance is a change in a person's course of conduct as a result of the assurance: Sabey at para. 41.
- [211] It is common ground that Meeka did not change her course of conduct because of any assurance made by Thom. There having been no reliance, there can be no suggestion that Meeka has suffered any detriment. That is a further reason to dismiss Meeka's claim based in proprietary estoppel.
- [212] However, it is argued that Lynn and Raymond changed their course of conduct as a result of the alleged assurances. Specifically, it is argued that they:
- a) Sold the Courtenay Property;
 - b) Moved into the Black Creek Property;
 - c) Looked after and maintained the Black Creek Property at their own expense;
 - d) Paid the property taxes and insurance for the Black Creek Property; and
 - e) Refrained from purchasing any other property.
- [213] In my respectful opinion, the record does not support the conclusion that Raymond or Lynn suffered any detriment as a result of these actions.

Sale of Courtenay Property and Restraint from Purchasing Property

- [214] Raymond and Lynn's primary argument for economic loss is that Thom told them that they had to sell the Courtenay Property and were not permitted to rent it out. They further argue they were not allowed to purchase another property. They argue that they have a history of flipping homes and this second restriction resulted in a lost opportunity to continue doing so.
- [215] There are several difficulties with these arguments, and I will address each in turn.
- [216] Firstly, the evidence does not establish on a balance of probabilities that Raymond and Lynn would have rented out the Courtenay Property if Thom had permitted them to do so.
- [217] Lynn testified that she said something to Thom about renting out the Courtenay Property and that Thom refused that suggestion. However, Raymond was adamant that he never considered renting out the Courtenay Property because renters skip out on rent and damage properties. Raymond and Lynn would have had to agree if they were to rent out the Courtenay Property and it does not appear likely that Raymond would have agreed. Thus, there can be no economic loss for lost opportunity to rent out the Courtenay Property.
- [218] Second, the evidence does not establish that Raymond and Lynn were likely to prioritize investment in real estate when they had free housing available to them.

- [219] Historically, when they did not have to pay for housing, Raymond and Lynn have not saved or invested but rather spent their capital on depreciating assets. For example, after the sale of properties in Ontario, they used some of the sale proceeds to pay back a loan they had received from Ms. Lamoreux and Thom to purchase a new truck, and they used the balance to purchase a new RV. They purchased the new RV despite that Ms. Lamoreux and Thom had provided them with an RV to reside in during construction of the Merville Property.
- [220] They did not invest any of the capital from the sale of the Ontario properties immediately in real estate. They waited to do so until 2010. Because of the earlier expenditures I have described, they had only a small deposit to put towards the purchase of the Courtenay Property, specifically \$15,000.
- [221] As I will explain in detail below, not only did they not invest the net proceeds of sale from the Courtenay Property, but they also did not save those proceeds. That is despite the fact that the alleged assurance was only that they would reside at the Black Creek Property until Thom's death. Although Lynn testified that Thom told her she would "be here until you die", I specifically reject that evidence as not credible and self-serving. That evidence is inconsistent with the evidence of every other witness who is alleged to have heard the representations in question.
- [222] Third, the evidence does not establish that Raymond and Lynn were likely to make real profits in "flipping" real estate properties. That is both because they had little capital to invest in real estate at any given time, and because historically they have made only slightly more than they have invested in the purchase of any particular property, excluding funds used for renovations.
- [223] Raymond testified that the first place he and Lynn purchased together was a triplex. Lynn testified that the purchase price of the triplex was less than \$100,000. Raymond renovated the bathroom, removed wood panelling, put up drywall, and repainted the home. They rented out the two upstairs units and lived downstairs. Raymond testified that they eventually sold the triplex. Although on paper it looked like they made money, by the time you adjusted for their expenditures, he acknowledged that they came out just slightly ahead.
- [224] They next moved to Martintown, Ontario, when Meeka was six months old. They purchased a house for approximately \$23,000 and did extensive work to totally overhaul it. Raymond testified that he had to jack the floor up, rip everything apart, re-insulate the walls, and room by room, and renovate the home. Raymond testified that he could not say how much money they spent renovating that home because they did it one room at a time over time. Eventually, they purchased their neighbour's property for approximately \$47,000. Lynn testified that she wanted to learn how to do the drywalling and tiling so she worked on the neighbouring property and Raymond would come in and fix her mistakes.

- [225] Lynn testified that after they moved to BC, the Martintown properties were sold, and they cleared approximately \$50,000. As I have explained above, the \$50,000 proceeds are not net profits because they do not include any accounting for the cost of the extensive renovations they undertook. Raymond and Lynn then used the sale proceeds to pay off a truck loan and buy an RV. They had only approximately \$15,000 to put towards their next real estate purchase.
- [226] Raymond and Lynn did not buy into the market right away. Instead, they waited for a couple of years to buy. They eventually purchased the Courtney Property for \$155,000 and sold it four years later.
- [227] They did extensive renovations on the Courtenay Property. Raymond testified that when they purchased the home, it was a mess. The foundation had been painted blue. The windows were old and had steel frames. Inside, the wall colours were not pretty, and the floor had been painted black. The corners of the walls were not squared off, and the bathroom was disgusting. Raymond testified they had to get everything out and rebuild the home. First, they addressed some structural issues. He did formwork in the crawlspace to level the floor. Then, they tore out the kitchen, put up new drywall and squared the interior corners, redid the flooring, replaced the siding, expanded the washroom, and more. They did the work in the evenings and on weekends while they were still living at the Merville Property. By the end of their rebuild, Raymond testified that the house was beautiful.
- [228] Lynn testified that they sold the Courtenay Property in December 2014 for \$210,094.80. After paying out the mortgage and costs associated with the sale, the net sale proceeds were \$73,324.35. Again, that cannot be considered net profits because that sum does not account for the cost of the extensive renovations described above.
- [229] Raymond testified about the condition of their old truck at the time they sold the Courtenay Property stating that the body was fine, but the motor was not and a very expensive part needed to be replaced. In those circumstances, they decided it was time to buy a new truck. They used the sale proceeds from the Courtenay Property to buy a new truck and a boat. The cost of the truck was approximately \$57,000. They made a \$23,923 down payment towards the truck.
- [230] They also did not have other money saved up that could be used to invest in real estate at this time. Lynn testified that when she and Raymond were first invited to move into the Black Creek Property, she told Thom that they could not afford to live at Black Creek and in Courtenay at the same time. As noted above, this evidence is not consistent with Meeka and Raymond's evidence. However, it does suggest that Raymond and Lynn had little saved at this point in time.
- [231] Thus, they made little profits on the sale of the Ontario properties or the Courtenay Property. As well, after the sale of the Courtenay Property, they had very little financial capacity to reinvest in real estate.

Move to the Black Creek Property Including Maintenance, Taxes, Utilities

- [232] As I will explain, I also find that the benefits they enjoyed from their move to the Black Creek Property offset any possible financial loss they incurred from not staying in the rising Vancouver Island real estate market. In making this assessment, I assume that but for the alleged promise they would have kept their Courtenay Property and continued residing in it. By 2025, the assessed value of that property was \$520,000. That is an increase of approximately \$310,000 from when they sold.
- [233] It is not disputed that at the time of his death, Thom held legal title to the Black Creek Property. During a romantic relationship between Meeka and Thom, at Thom's invitation in April 2014, Raymond and Lynn moved into the Black Creek Property and have lived there rent-free ever since.
- [234] Lynn and Raymond enjoyed many benefits from living at the Black Creek Property.
- [235] First, the Black Creek Property was bigger and nicer than the Courtenay Property and that alone is a benefit. That benefit is hard to quantify although clearly it is the reason why the value of the two homes has always been substantially different.
- [236] Second, they no longer had to pay a mortgage. The mortgage owing on the Courtenay Property at the time of its sale was \$136,192.32. I will not calculate the total interest saved as they had a variable rate and there are too many other variables to make a realistic estimate. However, at the time of closing the interest rate was 2.5% and mortgage was accumulating interest of \$9.27 daily.
- [237] Third, Raymond and Lynn were not expected to pay rent. Immediately prior to Raymond and Lynn moving in, Thom had rented out the Black Creek Property to friends for below market at \$1,200 per month or \$14,400 per year. That is \$158,400 over eleven years which only brings us up to April 2025 plus \$9,600 to the end of 2025 for a total benefit to Raymond and Lynn of \$168,000. The benefit is likely actually greater because, as I have mentioned, the rent being charged to the former tenants who were friends of Thom's was low.
- [238] Fourth, I have considered that up until Thom's death, Raymond and Lynn paid property taxes and insurance costs for the Black Creek Property which the prior tenants were not required to pay. Those costs varied. On the record before me for the years 2016 to 2021, insurance costs ranged between \$1,022 to \$1,562 per year and property taxes ranged between \$2,259 and \$2,817 per year. The average annual cost, then was approximately \$3,825. After Thom's death, in July 2022, Raymond testified that the interim administrator of the estate, Stephen Miller, advised him that the estate would pay the property taxes and insurance moving forward. Raymond and Lynn have not paid property and insurance since then. Thus, using the average cost, over the course of eight years and a quarter, they paid approximately \$31,563. However, this is offset by the fact that they would have also had to pay property taxes and insurance if they had maintained the Courtenay Property.

- [239] Fifth, they had the use of the capital from the sale of the Courtenay Property for other immediate needs such as a new truck or boat or whatever else they desired. They also had the ability to bank or spend their savings at a higher rate than when they had to make mortgage payments.
- [240] Finally, the plaintiffs argued they provided services in maintaining the Black Creek Property which offset any benefit they received. However, I do not agree that this work was a detriment to them that offset the benefits I have described. I say this for several reasons including that much of the work was elective and done to accommodate their personal tastes, few receipts have been kept that would permit a consideration of the value of the expenditures they have made, and general maintenance costs are offset by the fact that they have not had to expend funds to maintain another property.
- [241] Before discussing the work done by the plaintiffs, I will describe work that Thom paid to have done at the Black Creek Property on at least two occasions before they moved in, the second time immediately prior to Raymond and Lynn taking up residence there.
- [242] The first occasion was in or around 2010. Mella testified that Thom had done some renovations before she and her husband moved in. For example, he had enlarged the bathroom in the master bedroom and built a beautiful deck on the back of the house so that her husband would have a beautiful patio to sit on. The Black Creek Property was otherwise an older home, but Mella testified that there was nothing wrong with it.
- [243] Mella testified that they moved in in December 2010, and everything was under snow. Her husband was an artist, so his environment was very important to him. She testified that when the snow melted, she spent endless hours in the yard making it a magnificent place. For example, she planted bulbs and perennials. She established flower beds and planted fruit trees. She worked in the front, side and back yard of the property. She testified that the yard would get more and more spectacular as it became established.
- [244] Mella testified that she and her husband lived in the Black Creek Property for two or three years. They moved out in 2014.
- [245] Mella testified that she and her husband smoked in the Black Creek Property and so had Thom and Ms. Lamoreux before them.
- [246] After Mella and her husband moved out, Thom paid to have yet more work done. While this work was being done, Raymond and Lynn stayed at the Merville Property in a suite, rent free, because the Courtenay Property had been staged to be sold.
- [247] Thom paid Mr. Risser to raise the sunken living room and redo the master bedroom bathroom. Thom paid Mr. Risser's ex-wife to wash the walls and paint the property. Mr. Risser testified and I accept that the plaintiffs were not involved in any of this work.
- [248] I conclude there were therefore minimal if any immediate work requirements for the Black Creek property when Raymond and Lynn moved in.

- [249] Lynn testified that even though she chose the colour that was used to paint the house at Thom's expense, the colour was not suitable. She also testified that nicotine was bleeding through the paint, and it smelled. She and Raymond redid all the washing and painting when they moved in, and they paid for the materials.
- [250] I find this work was a matter of personal preference based predominantly on the choice of colour.
- [251] About a month after they moved in, Lynn testified that the hot water tank broke and they had to have it replaced. Thom agreed to pay for the tank, and she and Raymond paid for the labour. Lynn testified that after the hot water tank, Thom did not pay for any further maintenance or upkeep at the Black Creek Property. She and Raymond paid for all additional maintenance and improvements.
- [252] With only a couple of exceptions, I find that this additional work was generally to accommodate Raymond and Lynn's particular needs and preferences. In my view, costs of general maintenance are offset by the fact that had they maintained ownership of the Courtenay Property, they would have also had to pay for general maintenance of that property. As well, they have enjoyed years of use and enjoyment.
- [253] The work included the following:
- a) Lynn testified that in the master bathroom, they had to fix and put in a new shower head because the old one was leaking, and the pipe was cracked. They also changed the toilet in the main bathroom because it kept running and was off level.
 - b) There was also no exhaust fan, so they installed a ceiling light with an exhaust fan. In the master bedroom, she testified that they purchased and installed a new lighting fixture. In the dining room and fireplace room, they put in two new lighting fixtures.
 - c) In the studio, she testified that they put in a stainless-steel workbench along one wall and a brighter light fixture in the ceiling. Raymond testified that this was for Lynn's side business which was making soap and him selling oils wholesale. It was a steel counter that was easier to clean and was a particular choice made for that business.
 - d) With respect to the kitchen, Lynn testified they took off cupboards, backsplash, washed them all and repainted them all and put them back up. They also replaced the countertop and put tile on the wall. She testified that they replaced the appliances including the fridge, oven, and dishwasher. Raymond agreed that kitchen appliances do not last forever. He testified that they replaced the oven when it was seven years old and have had the benefit of the new oven for ten years.
 - e) In the mudroom, Lynn testified that they moved the washer and dryer to the utility room. They turned the former area where the washer and dryer were into a pantry. They changed the laundry sink out and put in a new one in with a new tap. They also changed the flooring because tiles were broken.

- f) In the old utility room, they put in a subfloor to even it with the pantry and put in new vinyl flooring.
- g) Outside, they put in gardens at the front, side and back of the house. They took out cedar hedges that were lining the driveway and brought in additional gravel. Raymond also made a retaining wall at the side of the property. Given the extensive work done by Mella a couple years earlier, I find these to have been cosmetic choices made by the plaintiffs.
- h) Raymond testified that he replaced the back deck. They also had purchased a hot tub; however, he acknowledged that this was a personal purchase to address Lynn's pain. He testified it was not to add value to the Black Creek Property.
- i) Raymond testified that he and Thom put together a workbench in the garage. He acknowledged this benefited him but testified it will benefit anyone who wants to play or work in the garage moving forward.
- j) They also did maintenance such as using zinc on the roof to help with the moss.

[254] Like the former repairs at the Courtenay Property, these repairs and renovations were undertaken as time permitted. Both Raymond and Lynn continued to work, although Lynn's work was interrupted in certain periods by health issues.

[255] The value of the work done by Raymond and Lynn is difficult to quantify. Raymond testified that the receipts in evidence in respect of improvements to Black Creek Property amounted to \$1,975.11. He testified that in addition to these receipts, they had purchased other things that they could not find receipts for. Much of the work done was in the nature of general maintenance. Other work was simply cosmetic or work done to accommodate the personal needs and wants of Raymond and Lynn. I find that Raymond and Lynn benefited from the work they did because they lived in the home and enjoyed the improvements.

Other Intangible Detriments

[256] Finally, I reject the argument that Raymond and Lynn suffered additional intangible detriments from structuring their lives around the alleged promise. The intangible detriment is said to arise by virtue of the way in which this alleged promise engaged with their place of residence, choices about the use of their money, and the use of their time.

[257] The evidence led at this trial satisfies me that the Merville Property, the Black Creek Property, and the Courtenay Property were all in relatively close proximity to each other. For example, Lynn testified that the Merville Property was approximately a ten-minute drive from the Black Creek Property and the Courtenay Property was approximately a twenty-minute drive from the Merville Property.

- [258] Thus, I cannot find that moving to the Black Creek Property was a significant change in terms of their choice of place of residence. As for the house itself, I have already found that the Black Creek Property was a nicer home than the Courtenay Property. It was not a detriment to live there and neither Raymond nor Lynn believed it was. It was never intended to be a forever home. If Thom made the assurances alleged, it was intended to pass to Meeka upon his death.
- [259] With respect to choices about their use of money, I cannot conclude that the alleged assurances worked to the detriment of Raymond and Lynn.
- [260] Even if they were restricted from purchasing real estate, Raymond and Lynn, like everyone, had other investment options available to them. There is no evidentiary basis on which I can determine whether other opportunities were better or worse than real estate. They do not appear to have invested their money. However, I cannot conclude that was materially affected by Thom's alleged promise. As I have already found, Raymond and Lynn typically spent the capital they had available. They did so when they did not have to pay for housing even when their next housing situation was uncertain, as it was in this case. In this case, even if Thom promised to leave the Black Creek Property to Meeka when he died, there was no assurance that Raymond and Lynn would continue to reside there after Thom's death. Despite this, they did not protect themselves against that future uncertainty. I cannot conclude that decision was informed by Thom's alleged assurance.
- [261] As for the use of their time, I have set out the improvements that were made to the Black Creek Property. I have concluded that those improvements were largely beneficial to Raymond and Lynn and responsive to their personal preferences.

Conclusions

- [262] For all these reasons I dismiss the proprietary estoppel claims for the additional reasons that even if an assurance was made, Meeka placed no reliance upon it and Raymond and Lynn suffered no detriment as a result of any such reliance.

Unjust Enrichment

- [263] In the final alternative, the plaintiffs advance a claim in unjust enrichment.
- [264] A claim in unjust enrichment requires: (i) enrichment; (ii) corresponding deprivation; and (iii) absence of juristic reason: *Kerr v. Baranow*, 2011 SCC 10, at para. 32.
- [265] I must dismiss this claim for substantially similar reasons as I have expressed above:
- a) There is no evidence that the renovation work of Raymond and Lynn has increased the value of the Black Creek Property. Thus, there has been no enrichment.
 - b) Nor, for the reasons set out above, do I accept that Raymond or Lynn suffered a corresponding deprivation.

- [266] As well, on all of the evidence before me, I find it is likely that, as a favour to Meeka, Thom entered into an occupancy agreement with Raymond and Lynn. The occupancy agreement was generous because, as I have explained above, its terms favoured Lynn and Raymond. That is in keeping with occupancy agreements Thom entered with others (such as Mella and Alexei, Ms. Zahara, and Mr. Risser). The terms of the occupancy agreement included that Lynn and Raymond were not expected to pay rent, but they were expected to pay certain expenses such as the property taxes, insurance, and alarm system fees and to maintain the property at their own cost.
- [267] The occupancy agreement is the juristic reason for the expenditures made towards those items.
- [268] Thom also permitted Lynn and Raymond to make renovations at the property so that it would be more comfortable for their own uses. In so doing, he did not give them any assurance that they would acquire an ownership interest in the property.

Conclusion

- [269] For the foregoing reasons, the plaintiffs' claims are dismissed. The defendant Nathan Emmanuel Ecker is entitled to his costs of this action.

"Latimer J."

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