

CANADA / JUDGMENT

Chan v. Tran

2025 BCSC 1308

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Supreme Court of British Columbia

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2025 BCSC 1308 Chan v. Tran

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Chan v. Tran,

2025 BCSC 1308

Date: 20250715

Docket: E212760

Registry: Vancouver

Between:

Brandi Chan

Claimant

And

Tien Dung Tran

Respondent

And

Nu Thi Pham, Truong Tien Tran, Nga Thi Tran, The Anh Nguyen and David Anh Tran

Respondents by Counterclaim

Before: The Honourable Justice Hoffman

Reasons for Judgment

Counsel for the Claimant:

N.D. Allen

Counsel for the Respondent and

The Respondents by Counterclaim:

P.W. Cote

E. Duke

Place and Date of Trial:

Vancouver, B.C.

April 28-30, 2025

May 1-2, 5-9 &12, 2025

Place and Date of Judgment:

Vancouver, B.C.

July 15, 2025

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Overview

- [1] The primary issue in this family claim is whether the parties lived in a continuous marriage-like relationship for at least two years such that they meet the definition of spouses in s. 3 of the Family Law Act, S.B.C. 2011, c. 25 [FLA].
- [2] The claimant, Ms. Chan, says she and the respondent, Mr. Tran, had a whirlwind romance. She contends that their relationship had the qualities of a "marriage-like" relationship from its commencement on July 7, 2013, and remained that way until the date of their separation on November 15, 2019. Pursuant to the FLA, Ms. Chan seeks equal division of family property and debt including several real properties and business interests held in the name of the respondent. She also seeks spousal support.
- [3] Ms. Chan also seeks an exclusion under the FLA with respect to gifts given to her by the respondent including \$61,000 she says he gifted her to purchase a townhouse on MacPherson Avenue in Burnaby (the "MacPherson Property") as well as the engagement ring he gave her in February 2019.
- [4] The respondent, Mr. Tran, admits that his relationship with Ms. Chan began in July 2013 but says that they did not begin to live together as spouses until July 2019, a state that lasted for only five months before their separation on November 15, 2019. Mr. Tran opposes any division of property and the claim for spousal support on the basis that the parties were never spouses for the purposes of the FLA. If the court finds that there was a marriage-like relationship, Mr. Tran says that all of properties at issue, except the MacPherson Property, are beneficially owned by his parents and are, accordingly, excluded property not subject to division under the FLA.
- [5] The respondents by counterclaim are members of Mr. Tran's family, namely his father, Truong Tien Tran; mother, Nu Thi Pham; brother, David Anh Tran; sister, Nga Thi Tran; and brother-in-law, The Anh Nguyen. To avoid any confusion, I will refer to the respondent by his first and last name. I intend no disrespect in doing so. If I conclude that the parties were spouses as defined by the FLA, the respondents by counterclaim seek an order that Tien Tran holds a portion of his interest in real properties in his name in trust for them, and Tien Tran seeks an order that these properties be excluded from the division of family assets.
- [6] The parties have no children together.
- [7] Regardless of whether the court concludes that the parties are spouses, Mr. Tran claims that Ms. Chan has been unjustly enriched in respect of two assets, the MacPherson Property, and a diamond engagement ring. He seeks a declaration that he holds a 50% interest in the MacPherson Property and an order for return of the ring.

- [8] There is no dispute that the parties were in a romantic, sexual, and exclusive relationship and that they became engaged in February 2019. There is also no dispute that the relationship ended in November 2019. Each party gave diametrically opposed evidence about the nature of the relationship leading up to the engagement and the periods of time in which they resided in the same residence.
- [9] The key issue before the court is whether the parties' relationship was marriage-like. Given the stark difference between the evidence of the parties in this regard, my assessment of credibility plays a key role in resolving this question.
- [10] For the reasons I will explain below, I find that the parties did not achieve a marriage-like relationship until July 2019 and, accordingly, do not satisfy the definition of spouses. As a result, I dismiss Ms. Chan's FLA claims. I further find that Tien Tran is entitled to a declaration that he has an interest in the MacPherson Property and may be entitled to the return of the engagement ring. However, an accounting is required to ascertain the extent of his interest in the MacPherson Property and to account for whether funds from Ms. Chan were used to purchase the ring.

Background

Factual Background

- [11] I start with setting out the background of the parties and their relationship, most of which is not in significant dispute.
- [12] Ms. Chan was born in December 1989, is currently 35 years old, and attends law school in the United Kingdom. She graduated from Simon Fraser University ("SFU") in 2013 with a degree in criminology. Following her graduation, she worked at the Immigration Refugee Board in an entry-level position.
- [13] Tien Tran was born in September 1984, is 40 years old, and is currently self-employed. He obtained an undergraduate degree from SFU, obtained his law degree in Australia in 2012, and was called to the bar of British Columbia in September 2013. When he met Ms. Chan, he was an articulated student.
- [14] The parties met at the Immigration Refugee Board as Tien Tran attended there often in connection with his work as an articulated student. One day he gave Ms. Chan his phone number. They began to date shortly thereafter. There is no dispute that their relationship began in July 2013. At that time, the parties were 23 and 28 years old, respectively. Ms. Chan says that the relationship was exclusive immediately. Tien Tran says that they became exclusive after a discussion that occurred approximately one month after they started dating.

- [15] At the commencement of their relationship, Ms. Chan lived with her mother in a one-bedroom condominium in Burnaby. Ms. Chan slept in a sectioned-off portion of the living room. Tien Tran lived with his family in their family home located on Gladstone Street in Vancouver.
- [16] When the parties met, Tien Tran managed three properties that were registered in his name either solely or jointly with his father. I will refer to these properties as Harrison Drive, Knight Street, and Morley Drive, respectively. Tien Tran's sister, Nga Thi Tran, was also on title of the Knight Street property as a joint tenant with Tien Tran and their father. Knight Street was a multi-unit residential rental property. Tien Tran's father is a builder and property developer.
- [17] Tien Tran also managed a rental property on East 61st Avenue that, at the commencement of the parties' relationship, was held solely in his father's name.
- [18] In November 2016, Tien Tran's mother and brother-in-law and a third party, Kathi Lan Wong, agreed to acquire a rural property on Gibson Road in Chilliwack. I will refer to this property as Gibson Road. After entering into the contract, they were unable to secure financing, and the sale of the property was assigned to Tien Tran in December 2016. The sale of Gibson Road completed in February 2017.
- [19] Tien Tran's father developed three properties at issue in this proceeding. Starting in 2013, he built a house and laneway on Harrison Drive which his family eventually moved into sometime in 2015. He also built a house on a property on Blenheim Street in Vancouver that was completed sometime in 2016. I will refer to this property as Blenheim. Finally, in 2017 or 2018, Tien Tran and his father commenced building a new house on the East 61st Avenue property which I will refer to as East 61st.
- [20] Both parties testified about a dinner that took place early in their relationship with Ms. Chan's mother, Mabel Chan, and her stepfather, Jackson Chan. This was the first time that Tien Tran had met members of Ms. Chan's family. Mabel and Jackson Chan expressed concerns about the pace of the parties' relationship. All agree that the dinner did not go well. After the dinner the parties discussed whether to continue their relationship. Ms. Chan says that she told Tien Tran that if her parents were trying to end their relationship, she would choose him over placating their concerns. As a result, she decided to move in with her father, Simon Chan, who had a house in Vancouver on Slocan Street. Ms. Chan took over the upstairs bedroom at the Slocan residence because it had an ensuite.
- [21] In the spring of 2014, Ms. Chan decided to pursue a career as a flight attendant and accepted a position with Air Transat with the hopes that she would be transferred back to Vancouver. Instead, she was posted to Toronto after her initial training. She moved to Toronto on May 28, 2014. The parties continued a long-distance relationship during this time through phone and video calls. Tien Tran visited Ms. Chan in Toronto for two weeks. When Ms. Chan was laid off from her job in September 2014, she returned to Vancouver and moved back into her father's house on Slocan.

- [22] Following her return, Ms. Chan worked part-time and casual jobs with the Vancouver Police Department and the Canada Border Service Agency until she secured a full-time position with the BC Lottery Corporation ("BCLC") in 2015.
- [23] The parties opened a joint bank account on July 13, 2015. This was their only joint account. They did not have any joint credit cards.
- [24] Between the fall of 2014 when Ms. Chan moved back to Vancouver until sometime in 2015, Ms. Chan asserts that the parties essentially lived together but did so nomadically sleeping together most nights of the week, either at her father's house on Slocan, at the Harrison property, or in the Knight Street property when there were vacant suites in between tenancies.
- [25] In 2014, Ms. Chan and Tien Tran took a two-week trip together to Hong Kong and Vietnam. Later in 2016, they travelled together to New York City.
- [26] Sometime in 2015, Tien Tran moved into the mostly completed laneway house at Harrison Drive. Ms. Chan says that she also moved into the laneway house. Tien Tran denies this. He says that she only stayed the night on weekends although he acknowledges that they sometimes spent time there in the evenings after work during the week.
- [27] Ms. Chan maintains that sometime in 2016-2017, she and Tien Tran lived together in the newly completed house on Blenheim. Tien Tran says that they only stayed in the house periodically.
- [28] In 2016, Ms. Chan purchased the MacPherson Property; a three-bedroom strata townhome. Tien Tran contributed \$61,000 towards the down payment for the home. Whether this was a gift or a contribution towards a joint purchase is in dispute between the parties. The parties did not occupy the townhome as it was rented to tenants soon after it was purchased.
- [29] There is no dispute between the parties that they became engaged on February 28, 2019, and that the proposal took place at the new home that was under construction on East 61st Avenue.
- [30] Tien Tran says that the parties first moved in together in the summer of 2019 after they became engaged. They took over the basement suite of the main family home on the Harrison Drive property which had become available when the tenant had left. There is no dispute that the parties argued during this time and that they sought couples counselling.
- [31] Both parties agree that the relationship ended on November 15, 2019, when Tien Tran sent a lengthy letter to Ms. Chan advising her that he was not happy in their relationship and had decided that it would be better to end their relationship before they got married and began a family.

Witness Credibility and Reliability

- [32] Credibility and reliability are not the same. Credibility is an assessment of the truthfulness of a witness whereas reliability assesses the ability of the witness to accurately observe, recall, and recount the events in question: *R. v. Plehanov*, 2019 BCCA 462 at para. 51, leave to appeal to SCC ref'd, [2020] S.C.C.A. No. 489.
- [33] In assessing the evidence of each party and the witnesses called on their behalf, I have taken into account the various considerations that comprise the assessment of trustworthiness of a witness's testimony identified in the oft-cited decision of *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186. These factors include:
- a) The ability of a witness to observe events;
 - b) The firmness of a witness's memory;
 - c) The ability of a witness to put aside their interests in the outcome of the litigation to modify their recollection;
 - d) Whether the evidence of a witness is consistent with other independent evidence;
 - e) Whether the witness changes their evidence during direct and cross-examination;
 - f) Whether the evidence of a witness seems unlikely, unreasonable, or implausible; and
 - g) Whether the witness has a motive to lie.
- [34] Consistent with *Farnya v. Chorny*, [1952] 2 D.L.R. 354, 1951 CanLII 252 (B.C.C.A), my consideration of the above factors is subject to an overall assessment as to the extent to which the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time.
- [35] At trial, Ms. Chan called her mother, Mabel Chan; her father, Simon Chan; her uncle, Sunny Po Sun Chan; her grandmother, Winnie Ting Yung Lai; family friends of her mother, Wai Yan Vian Lui and Ka Kei Manfred Wong; and two former co-workers, Lauren Rupert and Christopher Lee, to provide their observations of the parties. As I will discuss further below, I have concerns that the evidence of Ms. Chan's family members is less reliable given the limited opportunities they had to observe the parties' interactions as a couple.
- [36] Tien Tran called as witnesses his friends, Yong Sun (Louis) Eum, Janu Kalsi, Nicolas Shier, Justin Myers and his wife, Monica Orneles, to provide their observations of and interactions with the parties. Each of the respondents by counterclaim also testified regarding the various properties in question and their observations of interactions between the parties.
- [37] At the risk of stating the obvious, the primary witnesses in this matter were Ms. Chan and Tien Tran. They each testified to how they met, the progression of their relationship, their daily routines during the relationship, the purchase of the MacPherson Property, their interactions with each other's family, and how they socialized with friends.

- [38] Comparatively speaking, I find Tien Tran to be a more accurate historian of the progression of the relationship. On cross-examination, Ms. Chan frequently resorted to saying that she did not recall when asked for her recollections of key events and conversations. Many aspects of her evidence were coloured by a one-sided and unrealistic perspective on the relationship. Principal among these is her evidence that their relationship was marriage-like almost immediately. This defies common sense and is inconsistent with other more objective evidence regarding their interactions in the early stage of their relationship. That said, there were instances when both parties appeared to modify their evidence to either exaggerate or downplay certain evidence when they perceived that it would be in their interests to do so.
- [39] There are more serious credibility concerns with respect to both parties. For example, Tien Tran admitted to lying under oath when on discovery he denied that the farm on Gibson Road was being used to grow marijuana. This lie was uncovered during the trial by a joint appraiser retained to value the properties at issue. When confronted with the lie, Tien Tran readily admitted it but not before he permitted his counsel to give the court false information for the reasons why the appraiser could not access the property.
- [40] For her part, Ms. Chan demonstrated a willingness to conceal information or be untruthful with both her disability insurer and her employer. Although she went on disability leave from work in September 2023 due to the stress of this litigation and the terminal illness of her stepfather, she has been attending law school full time since September 2023 while collecting disability benefits. When questioned about this during cross-examination, she failed to see any need to advise her insurer that she is a full-time student. Further, during their relationship, she actively encouraged Tien Tran to claim to be living with her at the MacPherson Property, where neither party has ever lived, to justify her request to add him as a spouse to her employee benefits program. If they were living together nomadically as she now contends, it is incongruent that, at the time, she did not think that was a sufficient justification to claim Tien Tran as her common law spouse.
- [41] Despite these concerns, this is not a case in which I can make a sweeping finding that the evidence of either Ms. Chan or Tien Tran should be rejected in its entirety based on credibility issues. As the trier of fact, I may accept all, part, or none of a witness's evidence, and I may attach different weight to distinct aspects of a witness's evidence: *Riznek v. Riznek*, 2022 BCSC 2068. The trier of fact may do so even when there are serious credibility concerns regarding a witness: *Padgham v. Ram*, 2025 BCCA 100 at para. 41.
- [42] Accordingly, while exercising caution regarding the weight that I can attach to various aspects of the parties' evidence, I have assessed their evidence and have made findings of fact based on the evidence that I have accepted or rejected.

[43] Due to the stark contrast between Ms. Chan and Tien Tran regarding the nature of their relationship, it has been important to weigh the reasonableness, likelihood, and implausibility of the parties' evidence and consider the extent to which it harmonizes with other independent and objective evidence.

Marriage-Like Relationship Legal Framework

[44] For unmarried persons without children to qualify as spouses, they must meet the conditions sets out in ss. 1, 3 of the FLA:

1. In this Act:

"spouse" means a person who is a spouse within the meaning of section 3 [spouses and relationships between spouses];

3(1) A person is a spouse for the purposes of this Act if the person

- (a) is married to another person, or
- (b) has lived with another person in a marriage-like relationship, and
 - (i) has done so for a continuous period of at least 2 years, or
 - (ii) except in Parts 5 [Property Division] and 6 [Pension Division], has a child with the other person.

3(3) A relationship between spouses begins on the earlier of the following:

- (a) the date on which they began to live together in a marriage-like relationship;
- (b) the date of their marriage.

[45] The principles to be applied to a determination of whether there is a marriage-like relationship between parties are well-established. In articulating these principles, I can do no better than to re-produce the recent comprehensive summary of these principles by Justice Brongers in *Bellerose v. Reda*, 2023 BCSC 748:

[48] The concept of a "marriage-like relationship" has been the subject of considerable jurisprudential consideration. Many of these authorities were brought to my attention by the parties. I found the most helpful one to be the relatively recent decision of Justice E. McDonald in *Armstrong v. Scholz*, 2022 BCSC 863. Paragraphs 29 to 35 of her reasons contain a thorough review of several of the leading cases that have discussed the principles and approach to be applied when deciding whether two persons have been in a marriage-like relationship. These principles can be summarized as follows:

- a) The burden is on the claimant to prove that they meet the definition of "spouse". The standard is on a balance of probabilities (*Voth v. Martin*, 2019 BCSC 834 at para. 8, citing *F.H. v. McDougall*, 2008 SCC 53 at para. 49).

- b) Section 3 of the Act imposes both a two-year continuous "cohabitation requirement", and a marriage-like "relationship requirement". The cohabitation requirement is approached flexibly and may be satisfied even if the parties may have lived for extended periods at different locations (*Hu v. Lee*, 2022 BCSC 56 at paras. 41-42; *Thompson v. Floyd*, 2001 BCCA 78 at paras. 22-36).
 - c) The determination of whether a relationship was marriage-like requires a holistic approach in which all of the relevant factors are considered and weighed, but none are treated as being determinative of the question (*Austin v. Goerz*, 2007 BCCA 586 at para. 62).
 - d) While a "checklist" approach should not be employed, it can be helpful to consider the presence or absence of commonly accepted indicators of the sorts of behaviour that society, at a given point in time, associates with a marital relationship (*Weber v. Leclerc*, 2015 BCCA 492 at para. 25).
 - e) Such indicators of a marriage-like relationship may include: (1) shared shelter; (2) sexual and personal behaviour; (3) services; (4) social activities; (5) economic support and children; and (6) societal perception of the couple (*M. v. H.*, 1999 CanLII 686 (S.C.C.), [1999] 2 S.C.R. 3 at para. 59; citing *Molodowich v. Penttinen* (1980), 1980 CanLII 1537 (O.N.S.C.) at para. 16 - these are sometimes referred to as the "Molodowich factors").
 - f) Evidence of the subjective intentions of the parties is important to the determination of whether the relationship was marriage-like. However, this evidence must be tested against objective evidence of their lifestyle and interactions, which will provide direct guidance on the nature of the relationship (*Dey v. Blackett*, 2018 BCSC 244 at para. 195).
 - g) A person is either a "spouse" or is not. There is no middle ground. People may live together interdependently and yet fail to establish that they developed the kind of psychological and emotional union associated with marriage (*C.F.M. v. G.L.M.*, 2018 BCSC 815 at para. 10).
 - h) A marriage-like relationship is akin to a marriage without the formality of a marriage. However, it must be borne in mind that people treat their marriages differently and have different conceptions of what marriage entails (*Mother 1 v. Solus Trust Company*, 2019 BCSC 200 at para. 143).
- [49] Also worth mentioning are two recent "marriage-like relationship" decisions issued last year by our Court of Appeal, albeit in the context of estate litigation: *Coad v. Lariviere*, 2022 BCCA 222 at para. 127; and *Jones v. Davidson*, 2022 BCCA 31 at paras. 21-24. They effectively confirm that there is no specific definition of whether marriage-like relationships exist. In particular, such relationships are not simply defined by financial dependence, sexual relationships, or the mingling of property and finances. In sum, their existence ought not to be determined through a formulaic "checklist" approach, but rather through a contextual and holistic examination of all of the relevant aspects of the parties' relationship.

- [46] I have been guided by these principles in my contextual and holistic assessment of the evidence before me in this matter. Given the conflict between the evidence of each party regarding the nature of their relationship, it is particularly important in this case to test each party's subjective intentions against the objective evidence of the parties' lifestyle and interactions as instructed by the Court of Appeal in *Weber v. Leclerc*, 2015 BCCA 492 at paras. 23-24.

Findings Regarding Marriage-Like Relationship

- [47] There is no question that the parties were in an exclusive, romantic, and sexual relationship from sometime in July or August 2013 until their relationship ended in November 2019. While these qualities militate in favour of a finding of a marriage-like relationship, they alone are not sufficient to bring the parties within the definition of spouses under the FLA.
- [48] Having considered all of the evidence regarding the early period of their relationship from 2013 until her return from Toronto in 2014, I do not accept Ms. Chan's position that their relationship was immediately marriage-like. While the parties were in an exclusive, intimate relationship and spending a lot of time together, this is to be expected of a young couple embarking on a new relationship. I find based on the whole of the evidence that, at this early stage, they were in a dating relationship that had not yet reached a marriage-like commitment. For example, in September 2013, Tien Tran was called to the bar. He did not invite Ms. Chan to attend the call ceremony because he did not yet feel comfortable with introducing her to his parents. In fact, Ms. Chan did not meet Tien Tran's parents until sometime in 2015. After the first unhappy meeting with Ms. Chan's parents, Tien Tran refused to spend any time with Ms. Chan's mother and stepfather, which did not change until December 2015 or early 2016 when he attended Mabel Chan's birthday celebration. Ms. Chan's relocation to Toronto to pursue a career as a flight attendant, while Tien Tran remained in Vancouver to focus on pursuing his legal career, also suggests that the parties, while committed to a long-distance relationship, had not yet attained a marriage-like commitment.
- [49] I turn now to a consideration to the parties' relationship between 2014 and 2019. As the parties each organized their submissions around the various of factors indicative of a marriage-like relationship, I adopt a similar structure in my analysis with the recognition that I am not to resort to a checklist approach. Rather, I must consider the evidence of the parties' relationship as a whole.

Cohabitation and Shared Shelter

- [50] As set out above, Ms. Chan says that the parties cohabited continuously from the beginning of their relationship but that they did so "nomadically," spending the night at their respective homes and the various other properties that they had available to them prior to the summer of 2019. Tien Tran says that while they often spent nights together, usually on weekends, they did not cohabit until the summer of 2019 when they moved into the Harrison Drive basement suite.
- [51] I do not accept as credible Ms. Chan's evidence that she and Tien Tran lived together nomadically prior to the summer of 2019. When the parties' testimony is examined as a whole and assessed against the available documentary evidence, the preponderance of the evidence demonstrates that the couple negotiated to spend nights together in their respective family homes as their work and social schedules allowed and that they sometimes took advantage of staying at the other properties available to Tien Tran, such as Blenheim and the Knight Street 12-unit rental property, so that they could have more privacy. Ms. Chan testified that they spent nights together at Knight Street when there was a gap in occupancy between tenants. Based on Ms. Chan's admission that Tien Tran was diligent in ensuring that these units were always rented, I infer that any gaps in occupancy were infrequent and brief.
- [52] There is little objective evidence to corroborate Ms. Chan's evidence that she moved into the laneway house at Harrison Drive with Tien Tran in 2015. It is not disputed that she was given a key to the laneway house. However, I prefer Mr. Tran's evidence that she spent Friday and Saturday evenings there, brought only as many belongings as she needed for her overnight stays, and that there was no understanding between them that she had moved in. This is consistent with the evidence of Tien Tran's mother that in 2015 she only saw Ms. Chan at the Harrison Drive property on the weekends.
- [53] I do not accept as credible Ms. Chan's evidence that she and Tien Tran moved furniture into the Blenheim house sometime in 2016. Her evidence as to when this occurred and how long they stayed was vague. She testified that living at Blenheim did not work out as their commute to work was too long. As a result, they reverted to bouncing between staying at Slocan and Harrison Drive. It is not plausible that they would have spent the time and effort to move furniture into the Blenheim house only to realize soon after that their work commute was too long. I accept Tien Tran's evidence that they spent some weekend nights at Blenheim to check on the house. There was agreement that there was at least one dinner party hosted at Blenheim.
- [54] I accept that Tien Tran spent nights at the Slocan property. Text communications between the parties show that several times in late 2018 and early 2019, Ms. Chan communicated that she was at Slocan and had left the door unlocked for him. While Tien Tran acknowledges he was given a key for the Slocan house at one point, he had lost it. These texts suggest that in late 2018 and early 2019, he did not have a key or, if he had one, did not feel comfortable using it to gain access to Slocan. There were conflicts in the evidence before me regarding

the frequency with which Tien Tran would stay over at Slocan. Ms. Chan's father, Simon Chan, said that it was as much as four or five times a week, but he also acknowledged that he often went to bed early and that he was not keeping careful track of how often this occurred. When considered in light of other evidence, I do not accept Simon Chan's evidence as to the frequency of Tien Tran's overnight stays as reliable.

- [55] Tien Tran testified once he had moved into the main house on Harrison Drive in 2016 and until the summer of 2019, he and Ms. Chan did not have a regular schedule but that they typically spent one or two nights a week together, mostly on weekends. He testified that he preferred to stay at his home on Harrison Drive and occasionally stayed at Slocan.
- [56] I also accept that Ms. Chan spent nights in the main house on Harrison Drive. Tien Tran's mother testified that when her son was staying in the main house, Ms. Chan would sleep over at least one night a week. This is consistent with the evidence of Nicholas Shier, who rented the basement suite of the Harrison Drive house between December 2018 and May 2019. He saw Tien Tran at the Harrison Drive property at least four or five times a week whereas he saw Ms. Chan about three times during the whole period he lived there. While Mr. Shier indicated that he mostly ran into people in the yard of the property, this evidence is still helpful to assess the frequency with which Ms. Chan was at the property. Ms. Chan admits that she did not have a key for the main house. I do not accept as credible her evidence that Tien Tran told her she could not have a key because the doors had special locks that required expensive keys. The fact that she did not have a key is indicative of her being a guest, rather than a resident, in the Harrison family home.
- [57] In a telling text exchange on May 18, 2019, Ms. Chan sent a text late in the evening to say she was on her way home. Tien Tran responded that he was going to sleep at his home. She responded back, "we will never live together," to which he says that he sleeps early and wakes up early, that she stays out too late and that she should "go home."
- [58] The court also heard evidence from friends of Tien Tran, Justin Myers, and Monica Orneles, regarding a walk that they took with the parties in the spring or summer of 2019 after the parties became engaged. Mr. Myers met Tien Tran in law school and they socialized together once or twice a month. At the time of this social walk, Mr. Myers and Ms. Orneles had recently moved in together. When the walk occurred, Mr. Myers' understanding was that Tien Tran and Ms. Chan were engaged but not living together.
- [59] Ms. Orneles testified that during the walk she noticed Ms. Chan's ring. They discussed that Mr. Myers and Ms. Orneles had recently moved in together. Ms. Orneles then asked why Ms. Chan and Tien Tran were not living together. She did not recall the specific response but testified that there was some uncertainty and awkwardness on the part of Ms. Chan and Tien Tran. Mr. Myers recalls Ms. Orneles asking the question, that it was awkward, and that Ms. Chan and Tien Tran both had a response, but could not recall the specific words they used. Both Mr. Myers and Ms. Orneles gave their evidence in a straightforward manner. I accept their evidence as credible.

- [60] Ms. Chan had no recollection of this event. Tien Tran recalled the walk and that the topic of whether he and Ms. Chan lived together came up. He testified that while they had been discussing their living arrangements since the engagement, the pressure to move in together intensified after the walk. Ms. Chan told him that it was weird that they were not living together. After a discussion, in July 2019, they decided to move into the basement suite at Harrison Drive that had been recently vacated by Mr. Shier.
- [61] Ms. Chan maintains that the house under construction at East 61st between 2017 and 2019 was being built as her and Tien Tran's dream home. She points to email correspondence between the two of them regarding floor plans and design details and Tien Tran's choice to propose to her at this location to support this contention.
- [62] Tien Tran denies that the house was being constructed for him and Ms. Chan to live in. This property was acquired by his father in 2005, together with a co-signer. In 2017, Tien Tran was put on title with a 1% interest in the property. However, he did not make any financial contribution in exchange for this interest. Tien Tran's father testified that of his three children, Tien Tran expressed the most interest in following in his footsteps as a builder. He testified that he put his son's name on title of the East 61st property to give him a sense of ownership and as part of their overall plan to eventually pass on their assets to their children. It was not his intention to gift the property to Tien Tran.
- [63] The evidence of both Tien Tran and his father was that the project on East 61st was the first time that Tien Tran had control over the design. Tien Tran says that he shared his floor plans with Ms. Chan and sought her input on finishing details because he was excited with the plans he had produced. He further says that he chose this location to propose because it had a good view of the sunset from the roof.
- [64] There is insufficient reliable evidence before me to conclude that the house was being built as a home for the parties. Such a conclusion is implausible in the absence of evidence that the property was gifted to Tien Tran or that the parties made financial contributions to either the construction of the new home or the acquisition of Tien Tran's interest in the property. In the considerable volume of text messages and email communications between the parties, including those forwarding floor plans, there is a complete absence of any reference to the fact that East 61st was being constructed as their future home.
- [65] Considering all of the evidence, I find that the parties had not made a commitment to move into together until the summer of 2019 when they moved into the basement suite of the Harrison Drive property.
- [66] In arriving at this conclusion, I am mindful that a shared residence is not necessary to establish the existence of a marriage-like relationship: *S.L.M.W. v. M.R.G.W.*, 2016 BCSC 272 at para. 41. In some cases, lengthy periods of time living in separate locations has not precluded the finding of a marriage-like relationship, particularly where there is an obstacle that prevents the partners from living in the same residence: *S.L.M.W. or Connor Estate*, 2017 BCSC 978. The case before me stands in contrast. There was no obstacle preventing the

parties from sharing a residence prior to the summer 2019. Both parties were living and working in Vancouver, earning reasonable incomes, and Mr. Tran had access to properties that they could have rented or lived in if they both wished to take that step in their relationship. The absence of a commitment to live together before the summer of 2019 weighs in favour of the conclusion that the parties were dating and had not yet progressed to the point of a marriage-like commitment.

Economic Support

- [67] Ms. Chan takes the position that the parties pooled their finances for the purposes of covering family and other expenses. Tien Tran says that they each paid their personal day-to-day expenses separately but acknowledged that when they went out for dinner or otherwise, there was an understanding that he would usually pay.
- [68] I find as a fact that Ms. Chan did not name Mr. Tran as a beneficiary of her workplace pension. Nor did she identify Tien Tran as a common-law spouse on her tax returns. She paid for her own cell phone and car insurance. Ms. Chan did not contribute any funds to the Harrison property and Tien Tran did not contribute any funds to Slocan. I find that Tien Tran bought Ms. Chan gifts, some of them quite expensive, such as a designer handbag. These gifts are ones that could be expected to be given between partners in a dating relationship and are not necessarily indicative of a marriage-like relationship.
- [69] The parties' joint account, opened in July 2015, was not used for withdrawals until the purchase of the MacPherson Property in October 2016. There is evidence that the parties co-mingled their personal funds into this account after the acquisition of the MacPherson Property.
- [70] The majority of the evidence regarding the rendering of financial assistance relates to the MacPherson Property.
- [71] Ms. Chan says that the assistance that Tien Tran rendered to locate and acquire the MacPherson Property is a factor weighing in favour of a marriage-like relationship. Ms. Chan testified that Tien Tran used his experience with real estate to introduce her to mortgage brokers and to advise her on what to look for in a property. He used it as an opportunity to teach Ms. Chan what he had learned about the property market from his work managing his family's properties. Once they identified the MacPherson Property as suitable, it turned out to be more that Ms. Chan could afford alone. Her evidence is that Tien Tran told her that he loved her and wanted to make her dreams come true and gave her \$61,000 for the down payment. Ms. Chan also maintains that this was a gift and relies upon a gift letter signed by Tien Tran to support this contention.
- [72] Tien Tran says the purchase of the MacPherson Property was always understood between the parties as a joint investment and that he and Ms. Chan sought pre-approval for a mortgage together. This is consistent with an email dated March 21, 2016, in which Ms. Chan inquired about the status of a pre-approval for "Tien and I". However, once it came time to

secure financing, Tien Tran testified that the mortgage broker advised them that because Tien Tran was over-leveraged in respect of the other properties for which he was on title, the only way they could get financing was to have the property and mortgage in Ms. Chan's name only. It was in this context that Mr. Tran signed the gift letter on October 15, 2016.

- [73] The gift letter states that "this is to confirm that a financial gift in the amount of \$61,000 has been made to Brandi Chan to assist in the purchase of a home. These funds are being provided as a gift and will never have to be repaid." The letter also confirms that Tien Tran was "an immediate relative" of Ms. Chan. There is a box on the form for relationship to borrower. Both parties agree that Ms. Chan filled out boxes of the form and indicated that the relationship was "common law."
- [74] Considering Ms. Chan's willingness to provide inaccurate information to and withhold information from her employer and insurers as well as Tien Tran's failure to be entirely forthcoming about matters relating to the Gibson Road property, I am unable to give any weight to the gift letter. I find that it was completed with the primary objective of obtaining financing.
- [75] Once the MacPherson Property was acquired, Ms. Chan identified herself in email communications to the strata association as the new owner of the suite and identified Tien Tran as an alternative contact. Ms. Chan agreed that Tien Tran did the work to secure the first set of tenants. When the suite was rented out, the tenancy agreement listed both Ms. Chan and Tien Tran as landlords.
- [76] On July 27, 2017, approximately a year after the MacPherson Property was acquired, Tien Tran sent an excel spreadsheet to Ms. Chan which accounts for the initial and subsequent contributions the parties made to the MacPherson Property. This spreadsheet also treats the \$8,000 that Tien Tran spent on a used Prius for Ms. Chan as a contribution to the purchase price. Both parties testified that this car was acquired after Ms. Chan obtained the position of investigator with BCLC as she required a vehicle in this new role. Ms. Chan claimed that it was a gift whereas Tien Tran said that because his contribution to the MacPherson Property was less than Ms. Chan's, he told her that he would buy her a vehicle to make up the shortfall. However, he acknowledges that some time later, he decided to gift her the vehicle when her Uncle Sunny's car broke down and Ms. Chan had to share the car with her uncle.
- [77] Tien Tran says that after Ms. Chan returned from Toronto, he offered to help Ms. Chan purchase a property once she had a stable job because he wanted to give Ms. Chan a chance to attain the financial stability that her family was unable to offer her as a child. However, he says that he never intended the money to be a gift. He further says that the joint bank account was opened on the day that Ms. Chan started her employment with BCLC for the purpose of one day making this investment.
- [78] Ms. Chan denied in cross-examination that the bank account was opened on the day she became employed by BCLC. This was contradicted by her pension statement which shows that her employment date, July 13, 2015, coincides with the opening of the account. Ms.

Chan also could not recall them discussing that the bank account would be used to purchase property but did not deny that such a conversation took place. Her evidence is that the bank account was opened when she moved into the laneway house for the purpose of covering joint expenses, although she acknowledged that the account was not utilized for withdrawals until the MacPherson Property was purchased. This is confirmed by the records for the account and does not support Ms. Chan's contention that the account was intended to be used for joint living expenses.

- [79] Having considered the totality of the evidence surrounding the purchase of the MacPherson Property, I do not accept as credible Ms. Chan's evidence that the parties purchased the MacPherson Property as a home for themselves because the layout was ideal to grow a family with bedrooms for children. This evidence was directly contradicted by documents surrounding the purchase which show that, immediately following the purchase, both she and Tien Tran inquired with the strata association as to the required approvals to rent it out. While Ms. Chan may have hoped that it would one day be a home for the couple, I find that at the time it was acquired, it was intended as a joint investment.
- [80] With respect to the management of the MacPherson Property, both parties testified about water damage that occurred in the fall of 2018 that required repairs to the unit. Ms. Chan testified that it was Tien Tran's idea to do the repairs himself rather than leaving them to the insurance company's contractor. Tien Tran testified that he and his father did all of the work and that he incurred \$20,000 in material costs, only \$6,000 of which was covered by insurance. Tien Tran testified he paid these costs from his personal funds. No documents were tendered to confirm these amounts. Ms. Chan did not give any evidence that she contributed any of her own personal funds for the renovations.
- [81] Ms. Chan testified that the rental income the MacPherson Property generated was deposited into this joint account and that the MacPherson Property expenses were paid from this account. Bank records show that, from October 2016 to June 2019, the account was used to transfer significant funds on a regular basis mostly from Ms. Chan to Mr. Tran although occasionally in reverse. Ms. Chan did not provide any evidence as to the purpose of these specific transfers although she testified that it was common for Tien Tran to give her money.
- [82] On cross-examination, Tien Tran admitted that the funds that he withdrew from the joint account and deposited into his personal account were used to cover living and other expenses from the properties he managed. Ms. Chan submits that this establishes that the parties co-mingled their funds to financially assist one another. The difficulty with this proposition is that there was no specific evidence before the Court to establish why these transfers were made. Keeping in mind that the onus of proof lies on the claimant, I am unable to conclude that these transfers were necessarily made for the purpose of covering joint expenses.

[83] While the parties largely maintained separate finances, the contribution of Tien Tran to the purchase of the MacPherson Property and his acquisition of the Prius suggest that there was a genuine desire on his part to help Ms. Chan reach her financial goals. However, I am satisfied on the whole of the evidence that Tien Tran gave this assistance (with respect to the Prius at least initially) on the basis that it would be accounted for as an investment in the equity of the MacPherson Property rather than as an outright gift. There is evidence that Ms. Chan was contributing some funds to Tien Tran, although the purpose of doing so is not clear on the evidence. Overall, I find that, in respect of economic support, there is at least some evidence that weighs in favour of a finding that the parties had attained marriage-like relationship prior to 2019. However, again, this is not determinative.

Social and Societal Perceptions

[84] Ms. Chan says that she and Tien Tran hosted friends when they lived together both at the laneway house and at the Blenheim property. Tien Tran readily admitted that they attended events together including weddings of friends and family where it was expected that he would bring Ms. Chan as his plus one. Ms. Chan relies on a photo taken at her cousin's wedding where Tien Tran is included in the family group shot.

[85] Ms. Chan also points to the fact that Tien Tran was included in celebrations hosted by her family. They regularly celebrated her father and Uncle Sunny's birthdays together; Tien Tran attended a birthday celebration for her mother, Mabel Chan, in December 2015 during which he gave her a gift. After that, Tien Tran regularly attended birthday celebrations for her mother, stepfather, and maternal grandmother, Winnie Lai. Mabel Chan and Winnie Lai testified that members of her family gave Tien Tran red envelopes on birthdays and for lunar new years in keeping with their cultural tradition whereby older members of the family give the envelopes to younger members of the family.

[86] Manfred Wong and Vian Lui, who testified on behalf of Ms. Chan, are close friends of Ms. Chan's mother and stepfather. They testified that they attended intimate family dinners with Mabel and Jackson Chan where Ms. Chan and Tien Tran were the only other people invited.

[87] All the witnesses called on behalf of Ms. Chan, apart from Simon Chan and her Uncle Sunny, had relatively little opportunity to observe the parties' interactions as a couple and seemed to inform their impression as to the seriousness of the relationship largely from conversations with Ms. Chan or her mother rather than from objective observations.

[88] Tien Tran does not dispute that he attended the events and received red envelopes as contended by Ms. Chan. However, he submits that she exaggerates the extent of his connection with her family. He points to the fact that he did not have contact information for Mabel or Jackson Chan and would not communicate with them if Ms. Chan were not present. Further, his relationship with Mabel and Jackson Chan was strained, not only due to his initial unhappy meeting with them but also because of another incident involving beef jerky sometime in 2018. Mabel Chan testified that she bought some beef jerky and offered

some to Tien Tran while he and Ms. Chan were visiting. After they left, she discovered that the beef jerky was missing. Mabel Chan called her daughter who confirmed that Tien Tran had taken it. Mabel Chan thought this was very rude. Mabel Chan acknowledged that this caused friction, and, as a result, Tien Tran no longer came to visit them. This is consistent with texts from February 2019 in which Mabel Chan asks her daughter to forward her apology to Tien Tran. In the text, Mabel Chan expresses her desire to clear up the misunderstanding because it has been so long since they have seen him.

- [89] Ms. Chan's grandmother, Winnie Ting Yung Lai, could not identify Tien Tran when asked to point him out in the courtroom. She was eventually able to identify him from photos. I take from this that she did not spend significant amounts of time with Tien Tran.
- [90] Generally, Ms. Chan did not communicate with Tien Tran's family members when he was not present. Tien Tran's mother confirmed that she and Ms. Chan went shopping for clothes together twice and to Costco once or twice. I heard evidence of Ms. Chan attending only two family holiday dinners with Tien Tran's family, although Tien Tran's mother acknowledged that Ms. Chan ate everyday meals with his family on a regular basis, which were usually prepared by Tien Tran's mother. Ms. Chan had a very strained relationship with Tien Tran's sister, Thi Nga Tran. I heard evidence from several witnesses about a heated argument between them in 2019 over the use of the laundry facilities in the Harrison Drive main house. The fact that this dispute arose, at least in part, because of Ms. Chan's usage of the laundry outside the times that the family set aside for laundry is significant. Had she lived at the house as she contends, it would be reasonable to expect her to have knowledge of the rules regarding laundry usage.
- [91] It is not in dispute that the parties' immediate families never met each other. In evidence is a text chain from December 2018 in which Tien Tran declines Ms. Chan's request to include her cousin, Tiffany, Simon Chan, and her Uncle Sunny in Christmas dinner with Tien Tran's family.
- [92] All of Tien Tran's friends called to provide evidence referred to the couple as boyfriend and girlfriend. As noted above, in early 2019, Justin Myers and Monica Ornelas understood that they were not living together even though they were engaged. Tien Tran's family members regarded Ms. Chan as his girlfriend.
- [93] It is clear on the evidence that Ms. Chan and Tien Tran presented to their families and their friends as a committed couple and that it was expected that they would attend events together. Notwithstanding this, there is insufficient reliable evidence for me to conclude that their relationship was perceived by others as being spousal in nature. The evidence of witnesses called by Ms. Chan who testified that she and Tien Tran were cohabiting as husband and wife was not based on extended observations of the couple but rather on conversations with Ms. Chan or her mother. While Tien Tran was a recipient of red envelopes from Ms. Chan's family elders, this is only indicative of the fact that Ms. Chan's family regarded Tien Tran as the exclusive romantic partner of Ms. Chan. It is not sufficient,

in and of itself, to conclude that Tien Tran was regarded as a member of the Chan family, particularly when considered in the context of the strained relationship between Ms. Chan's mother and stepfather, and Tien Tran. Ms. Chan placed great significance on the inclusion of Tien Tran in the gifting of red envelopes within her family. However, this emphasis only serves to underscore the paucity of other objective evidence that Ms. Chan relies on to establish that their friends and family regarded them as spouses.

Services

- [94] Ms. Chan says that she and Tien Tran cooked, grocery-shopped, ate meals together, and, before the purchase of the Prius in 2017, commuted to work together. She testified that when they lived in the laneway house, she did the laundry and most of the cleaning and that they shared the cooking and the grocery shopping. She maintains that when they moved into the Harrison Drive main family house, they ate with the family most of the time because his mom is a very good cook. She admitted that Tien Tran's mom did his laundry and she would do her own laundry.
- [95] Prior to their decision to move in together in 2019, Tien Tran says that they completed their domestic tasks separately. Tien Tran says that Ms. Chan did not really cook that much and only assisted his mother with small tasks when his mother prepared family meals. He relied on his mother to cook for him and do his laundry at the Harrison Drive property.
- [96] Given my conclusion that Ms. Chan did not live at either the Harrison Drive laneway house or the Harrison Drive main house prior to moving into the Harrison basement suite in the summer of 2019, I do not accept as reliable Ms. Chan's evidence that she was doing all of the laundry and most of the cleaning prior to this point. I find that Tien Tran relied mostly on his mother to do his laundry. While there is some evidence that Ms. Chan and Tien Tran cooked meals together when they spent time together, I find that they more often relied upon their family members to provide them with food. Up until the summer of 2019, the inclusion of Ms. Chan and Tien Tran in family meals in their respective family homes is more consistent with their status as guests rather than residents.
- [97] I accept that Tien Tran regularly drove Ms. Chan to work before the purchase of the Prius and picked her up after she had been out with friends. I regard this as a form of services. However, they are services that one would expect to be provided by people in an exclusive dating relationship and do not on their own indicate the existence of a spousal relationship.
- [98] Reviewing the evidence on this factor as a whole, I find that, while Ms. Chan and Tien Tran rendered some assistance to one another, they were not providing the domestic services to each other that one associates with a marriage-like relationship prior to the point that they moved together into the Harrison Drive basement suite in 2019: Bellerose at para. 71.

Conclusion

- [99] From my holistic review of the evidence and considering the submissions of the parties, I conclude that Ms. Chan has not satisfied her burden to prove that her relationship with Tien Tran was marriage-like for a continuous period of two years.
- [100] This is based upon my analysis of the indicators set out above, most of which militate in favour of this conclusion, undertaken in conjunction with the evidence of each party's subjective intentions in the relationship. While Ms. Chan appears to have held the subjective intention that their relationship was a permanent commitment, I find that this intention was not shared by Tien Tran for a continuous period of two years. It is apparent from the evidence of Tien Tran as well as the breakup letter he delivered to Ms. Chan that he had hoped that their engagement would clear up his doubts about taking their relationship to the next level of marriage and children. Unfortunately, conflicts between them, which intensified after they moved in together in the summer of 2019, made it clear to him that he and Ms. Chan were not meant to be together. While Ms. Chan clearly had hopes that the relationship would culminate in marriage and children, the objective evidence of the interactions between the parties and their lifestyle show that their relationship did not progress to the point of continuous cohabitation prior to the summer of 2019.
- [101] In arriving at this conclusion, I have considered Ms. Chan's request that I draw an adverse inference that documents on a hard drive she left at the Harrison property after their separation were not produced because they contained evidence that could be used to demonstrate a marriage-like relationship. Tien Tran admitted in cross-examination that in 2022, Ms. Chan asked him to return it and that he did not respond to the request. He also admitted that he accessed the hard drive to produce documents from Ms. Chan in this litigation and that Ms. Chan did not have access to it. Counsel for Ms. Chan did not establish through cross-examination what specific documents were and were not produced from the hard drive. In the absence of this line of inquiry, the extent to which documents on the hard drive may, or may not, have been produced is not clear. Nor was it explained why orders were not sought prior to trial to compel return of the hard drive. Whether to draw an adverse inference is a matter of discretion: *British Columbia (Director of Civil Forfeiture) v. Angel Acres Recreation and Festival Property Ltd.*, 2023 BCCA 70 at para. 183. In the absence of unambiguous evidence that relevant documents from the hard drive were not disclosed, I decline to exercise my discretion to draw an adverse inference.

The MacPherson Property - Resulting Trust

- [102] The factual finding I have made that Tien Tran's \$61,000 contribution to the MacPherson Property was not a gratuitous transfer disposes of Ms. Chan's argument that that it was a gift. My conclusion that the parties were not spouses disposes of Ms. Chan's argument that the \$61,000 contribution should be excluded from the division of family assets under the FLA. What remains to be decided is whether, as a result of the contribution made by Tien

Tran to the acquisition of the MacPherson Property, Ms. Chan holds the property in trust for Tien Tran.

- [103] Tien Tran takes the position that Ms. Chan holds 50% of the MacPherson Property in an express trust for him. In the alternative, he submits that he has a 50% resulting trust in the MacPherson Property.
- [104] The legal framework for the establishment of an express trust was set out by the Court of Appeal in *Xu v. Hu*, 2021 BCCA 2 at paras. 12-18. In order to establish an express trust, the onus lies on Tien Tran to establish on a balance of probabilities the elements of an express trust, namely the certainties of intention, subject and object and, further, that the property has been vested in the trustee: *Xu* at para. 13.
- [105] The intention to create a trust on the part of the settlor, or in more plain language, the person who creates the trust, is the central requisite element: *Xu* at para. 15. This is because express trusts arise directly from the acts or intentions of the trustee and are distinguishable from other types of trusts that arise due to the operation of law: *Xu* at para. 15.
- [106] Accordingly, Tien Tran must establish that, through her words or acts, Ms. Chan intended to create an express trust in the MacPherson Property for his benefit. It is not sufficient to merely establish that Ms. Chan intended Tien Tran to benefit from the MacPherson Property, her intention must be for him to benefit on trust: *Xu* at para. 16. While no particular form of words is required to create the trust, there must, nonetheless, be a clear declaration of trust. When acts are relied upon to establish an express trust, those acts must be so clear that they support no other interpretation other than the intention to create a trust: *Xu* at para. 17.
- [107] I find that Tien Tran has failed to meet his burden to establish an express trust. There is no evidence of a clear declaration made by Ms. Chan, either through her words or actions, that she was holding the property in trust for him. Absent this necessary element, an express trust cannot be established.
- [108] I turn now to the question of whether Ms. Chan holds the MacPherson Property subject to a resulting trust for the benefit of Tien Tran. That Ms. Chan alone holds the legal title to the property does not preclude a finding that the property is held subject to a resulting trust. As held in *Suen v. Suen*, 2013 BCCA 313 at para. 34, the statutory presumption of indefeasible title set out in s. 23(2) of the Land Title Act, R.S.B.C. 1996, c. 250, may be rebutted by:
- (i) the operation of a resulting trust which may be inferred where no value is given for a legal interest;
 - (ii) the operation of an agreement between the parties that is contrary to the registered legal title;
- or

(iii) taking into account the underlying equitable interests between the parties (e.g., considerations that arise in claims for unjust enrichment).

[109] The Supreme Court of Canada affirmed the doctrine of purchase money resulting trust in *Nishi v. Rascal Trucking Ltd.*, 2013 SCC 33 at paras. 23-28, as a species of gratuitous transfer resulting trust. At para.1, the Supreme Court held:

[1] A purchase money resulting trust arises when a person advances funds to contribute to the purchase price of property, but does not take legal title to that property. Where the person advancing the funds is unrelated to the person taking title, the law presumes that the parties intended for the person who advanced the funds to hold a beneficial interest in the property in proportion to that person's contribution. This is called the presumption of resulting trust.

[110] Given my finding that the \$61,000 Tien Tran contributed to the purchase price for the MacPherson Property was not intended as a gift, I find that Ms. Chan holds a portion of the MacPherson Property in a resulting trust for him. As for the proportion of that interest, it is unclear on the evidence whether a 50% interest as submitted by Tien Tran is appropriate in this case. While Ms. Chan initially contributed \$79,000, there are substantial additional transfers from Ms. Chan to Tien Tran through the joint account used to manage the MacPherson Property that are unaccounted for in the one contemporaneous accounting of each parties' respective contributions tendered into evidence. It is unclear whether these transfers have anything to do with the MacPherson Property, but the fact that they came through the account established for the purposes of managing that property raise the possibility that they are connected. Although Tien Tran testified about other contributions of labour and materials for renovations he made to the MacPherson Property, he did not tender receipts to confirm these amounts.

[111] Accordingly, I direct that the parties each prepare an accounting of their contributions made to the MacPherson Property, together with all available documentary evidence supporting the contributions from the purchase date to present. Attempts should then be made to agree as to the percentage interest that Tien Tran holds in the property. The accounting should also address Tien Tran's claim to the rental income that has been received by Ms. Chan from November 2019 until present. If the parties are unable to agree, then pursuant to Rule 18-1 of the Supreme Court Family Rules, I refer the matter to the Supreme Court registrar for an accounting, the results of which shall be certified by the registrar pursuant to Rule 18-1(2) of the Supreme Court Family Rules.

Engagement Ring

[112] In B.C., the law governing engagement rings is that they are gifts made on the condition of marriage as opposed to absolute gifts not returnable on the termination of an engagement. The onus is on the recipient of the ring to prove that the person transferring the gift intended it as an absolute gift: *P.S. v. H.R.*, 2016 BCSC 2071 at paras. 69-73.

- [113] Ms. Chan submits that the evidence establishes that the ring was an outright gift because Tien Tran sought her input with respect to its purchase. Further, after their separation, he made no request for return of the ring, even though he made numerous requests to deal with the MacPherson Property. In the alternative, she says that the ring was purchased with funds she transferred to Tien Tran through their joint account.
- [114] Tien Tran testified that he did not give the ring to Ms. Chan as a gift and that she called no evidence to counter his version of events. He testified that he did not seek return of the ring until he was advised that he had a right to do so.
- [115] If the ring was paid for entirely with Tien Tran's funds, I find that Ms. Chan has not met her evidentiary onus to establish that the ring was an absolute gift. However, her transfer of funds into the joint account in January 2019 and Tien Tran's withdrawals from the account in the same month cause me to conclude that it is possible that her funds were used, in part, to purchase the ring. Ms. Chan should not be required to compensate Tien Tran for any portion of the ring that was funded either from her funds or from her portion of the income from the MacPherson Property.
- [116] If the parties are unable to agree as to what portion of Ms. Chan's funds, if any, were applied to this purchase, the accounting I have directed should also include a tracing of the funds used by Tien Tran to purchase the engagement ring.
- [117] If it is established that Tien Tran purchased the ring entirely with his own personal funds, then the ring should be returned to Tien Tran.

Directions for Accounting before Registrar

- [118] Pursuant to Rule 18-1(12), I direct that the parties should tender before the registrar the evidence and documents relating to:
- a) the contributions made by each party to the MacPherson Property;
 - b) the purpose of the unaccounted-for transfers made from the claimant to the respondent in the joint account between October 2016 and November 2019;
 - c) the rental income received from the MacPherson Property from November 2019 to present;
 - d) Ms. Chan's reasonable expenses incurred in respect of the MacPherson Property; and
 - e) the source of the funds used to purchase the engagement ring.

Disposition

- [119] I declare that the parties are not spouses within the meaning of ss. 1 and 3 of the FLA and dismiss Ms. Chan's claims pursuant to the FLA.

- [120] I order that Ms. Chan holds a portion of the MacPherson Property in trust for Tien Tran, the proportion of which is to be agreed to by the parties within 60 days of this judgment, or failing that, to be determined and certified through an accounting by the registrar. If there is no agreement and the parties proceed to an accounting before the registrar, they are directed to schedule a prehearing conference before the registrar prior to seeking a date for the accounting.
- [121] I order that Tien Tran is entitled to a portion of the rental income from the MacPherson Property from November 2019 onwards, in accordance with the proportion of his interest as agreed by the parties or determined on an accounting, less reasonable expenses incurred by Ms. Chan.
- [122] I order Ms. Chan to compensate Tien Tran for the portion of the ring that was purchased with Tien Tran's personal funds as agreed by the parties or determined on an accounting. If it is established that Ms. Chan did not contribute funds to the engagement ring, Ms. Chan is ordered to return the ring to Tien Tran.
- [123] I dismiss the request by the respondents by counterclaim for a sealing order in relation to the appraisal prepared in respect of the Gibson Road property. No authorities were brought to my attention in support of this request. Further, the submissions made in respect of this request were extremely brief and amounted to an assertion, unsupported by any evidence, that the respondents by counterclaim had vague security concerns arising from an alleged robbery that occurred on the property some time ago.
- [124] The parties have sought leave to make submissions on costs after the release of my decision in this matter. The parties shall make submissions in writing and may, if necessary, address the need for an oral costs hearing. I reserve the right to determine whether such a request is warranted. If the parties cannot agree on costs, the claimant shall within 30 days of these reasons, deliver to the respondent her submissions on costs. The respondent shall then deliver his submissions within 15 days and thereafter, both sets of submissions should be filed with the court through Supreme Court Scheduling.

"Hoffman J."

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