
CANADA / JUDGMENT

Chen v. Ho

2013 BCSC 533

COURT

Supreme Court of British Columbia

DECIDED

28 March 2013

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2013 BCSC 533 Chen v. Ho

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Chen v. Ho,

2013 BCSC 533

Date: 20130328

Docket: E091230

Registry: Vancouver

Between:

Jing Chen a.k.a. Jade Chen

Claimant

And

David Chee Keung Ho and H & Y Developments Limited

Respondents

Before: The Honourable Madam Justice Gray

Reasons for Judgment

Counsel for the Claimant:

W.M. Wong

Counsel for the Respondents:

S. Mah

Place and Date of Trial:

Vancouver, B.C.

March 12-14, 19-23; April 2-5, 10-13; June 5-8, 11-15, 18-22; July 9-12, 17-20; August 28-29 and 31, 2012

Place and Date of Judgment:

Vancouver, B.C.

March 28, 2013

INTRODUCTION

- [1] The parties cohabited for about 14 years and had a son together named Ronald. There are millions of dollars worth of assets in Hong Kong and Canada which are either in Mr. Ho's name or which one or both of the parties claims he owns. The issues which proceeded to trial were Ms. Chen's claims for a declaration that she is entitled to certain assets, either on the basis that Mr. Ho gave them to her, or on the basis of unjust enrichment, and her claim for spousal support. Mr. Ho admits that he is liable to pay spousal support to Ms. Chen, but the parties disagree about quantum. Issues relating to parenting and child support were adjourned by consent of the parties.
- [2] The unusual features of this case include the fact that Mr. Ho is about twenty years older than Ms. Chen, Mr. Ho remains legally married to Ms. Yip, and when the parties commenced their relationship, Mr. Ho had significant capital and was in the process of retiring. Mr. Ho has been living on both the interest and principal of that capital since the parties met. Another unusual feature is that Ms. Chen had a child from a prior relationship, Raymond, who is now an adult and is presently living with Mr. Ho rather than his mother.
- [3] Ms. Chen's claims proceeded to a trial which lasted 41 days. The evidence of Ms. Chen and Mr. Ho conflicted on most matters, including whether Mr. Ho made gifts of certain assets to Ms. Chen, and whether the legal owner was also the beneficial owner.
- [4] The witnesses consisted of Ms. Chen, Mr. Ho, Mr. Sze (a chartered accountant), Ms. Yip, Ricky (the son of Ms. Yip and Mr. Ho), and Raymond.

Ms. Chen testified through an interpreter of the Mandarin language. Ms. Yip testified through an interpreter of the Cantonese language.

- [5] The facts relate to assets in Canada, Hong Kong, and China, and to funds in Canadian dollars ("CAD"), U.S. Dollars ("USD"), Hong Kong dollars ("HKD"), and Chinese Renminbi ("RMB"). The reference is to CAD if other currency is not noted.
- [6] Ms. Chen claims that she is entitled to an interest in the following assets (which are defined later in these reasons for judgment):

- a) South Granville House (a house in the 1300 block of West 51st Avenue, Vancouver, B.C.);
 - b) Two Broadway Properties and H & Y;
 - c) proceeds of sale of the Le Point Flat;
 - d) UBS Ho Account;
 - e) UBS Alleged Joint Account;
 - f) HSBC Joint Account; and
 - g) Mercedes and BMW.
- [7] The parties agree that Ms. Chen is the owner of property in Zhuhai, China ("Zhuhai Flat") and the Telford Flat in Hong Kong. The parties agree that Ms. Chen owes Mr. Ho 650,000 HKD, being less than \$100,000 CAD, in respect of the loan he made to her ("Telford Loan") for the purchase of the Telford Flat.
- [8] This case was heard and argued prior to the coming into effect of the Family Law Act, S.B.C. 2011, c. 25.

ISSUES

- [9] The issues in this case regarding assets are who owns what assets, and whether Ms. Chen is entitled to a share in assets on the basis of unjust enrichment. The issues regarding spousal support are primarily what is the proper assessment of Mr. Ho's income.
- [10] The parties consented to the following orders:
- a) a declaration that Ms. Chen owns the jewellery in her possession or control; and
 - b) a declaration that Ms. Chen owes Mr. Ho the sum of 650,000 HKD, being less than \$100,000 CAD, in respect of the Telford Loan.
- [11] The parties agreed that Ms. Chen owns the Telford Flat (Flat 208, 2nd floor, Block S, Telford Gardens, No. 33 Wai Yip Street, Kowloon, Hong Kong) and the Zhuhai Flat in mainland China. Those properties are outside the jurisdiction of this court, and so this Court cannot make declarations regarding ownership.
- [12] The evidence of the parties was in stark contrast on most issues. With respect to many assets, Ms. Chen asserted that Mr. Ho gave her an interest, particularly when title was registered solely or jointly in her name, while Mr. Ho asserted that he retains full beneficial ownership.
- [13] The B.C. Court of Appeal said the following about credibility in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. ...

- [14] Ms. Chen is relatively unsophisticated in matters of investments, and she left family financial management to Mr. Ho. During the period the parties were together Mr. Ho engaged in numerous transactions, some involving his legal wife (Ms. Yip) and the children from his legal marriage.
- [15] In order to subject Mr. Ho's story to an examination of the probabilities that surround the relevant conditions, it is necessary to consider how Mr. Ho dealt with assets over the period of about 14 years that the parties were together, and in particular, in what circumstances Mr. Ho arranged for someone else to hold legal title, and in what circumstances there was a difference between the holder of legal title and the holder of equitable title.
- [16] In order to consider the probability that Mr. Ho made gifts to Ms. Chen at certain times, I have set out facts relating to the nature of their relationship at the relevant times.
- [17] In the alternative to her claim that Mr. Ho gave certain assets to her, Ms. Chen claims entitlement to a share in the following assets on the basis of unjust enrichment: the South Granville House; the HSBC Joint Account; the sale proceeds of the Le Point Flat; H & Y; the Two Broadway Properties; the UBS Ho Account; and the HSBC Ho Account. For those assets, the court must consider whether Mr. Ho was unjustly enriched by Ms. Chen, whether Ms. Chen suffered a corresponding detriment, and whether the enrichment was unjust. This requires consideration of what benefits Ms. Chen received from her relationship with Mr. Ho over the years. The parties agreed that Mr. Ho gave Ms. Chen spending money, jewellery, fur coats and handbags, but they disagree about the amount that he gave her.
- [18] The court must also determine the amount of Mr. Ho's income for the purposes of spousal support, and make an award for spousal support for Ms. Chen. Both parties ask that the spousal support award be made in a lump sum.
- [19] The relevant facts and evidence are detailed in the following chronology of facts and evidence. Some of the major events are set out in headings, which are to assist in locating facts and evidence, but do not attempt to summarize all the events. The headings are as follows:
 - a) Before Parties Met;
 - b) Ms. Chen and Mr. Ho Meet;
 - c) Ms. Chen and Canada;

- d) Zhuhai Flat Purchase;
- e) Blundell Townhouse Purchase;
- f) Ho/Yip Divorce Agreement;
- g) HSBC Joint Account;
- h) Guardianship of Raymond;
- i) Blundell Trust Declaration and Blundell Chen/Ho Transfer;
- j) Ms. Chen's Employment;
- k) Ronald's Birth;
- l) South Granville House Purchase;
- m) South Granville House Declaration and First Ho Will;
- n) Le Point Flat Agreement to Purchase;
- o) Marshall Company;
- p) Tristar Property Purchase;
- q) Tristar Property Sale;
- r) Telford Flat Purchase;
- s) Le Point Flat Purchase Completion;
- t) Cars;
- u) March 2009 Argument, Son Removal Document, and South Granville Chen/Ho Transfer;
- v) Reconciliation Efforts ;
- w) World Base Shares;
- x) Telford Flat Documents;
- y) Le Point Flat Sale ;
- z) Separate Under Same Roof;
- aa) Second Ho Will;
- bb) Marshall Company Taxi Sales;
- cc) Hong Kong Telford Lawsuit;
- dd) UBS Ho Account Earnings;
- ee) Appraisals: Two Broadway Properties and Telford Flat; and

ff) Present Status.

[20] The findings of fact on the disputed matters are set out following the chronology of facts and evidence, during the analysis.

CHRONOLOGY OF FACTS AND EVIDENCE

a) Before Parties Met

[21] Mr. Ho was born in November 1943 and is presently 69 years old. He was born in China and raised in Hong Kong. He finished seven years of school, and over the following four or five years, took a number of night school courses at a technical institute. His first language is Cantonese. He speaks some Mandarin, but not fluently, and with a sufficiently heavy Cantonese accent that some Mandarin speakers cannot understand him. Mr. Ho's spoken and written English is good.

[22] Ms. Chen was born in September 1963 and is presently 49 years old. Her first language is Mandarin. Her Cantonese is presently good, and improved significantly over the period of her relationship with Mr. Ho. Ms. Chen's English abilities are poor. She completed high school in China, following ten years of schooling.

[23] Mr. Ho married Irene Yip ("Ms. Yip") in 1967 and remains legally married to her. Ms. Yip is a few years younger than Mr. Ho. Mr. Ho and Ms. Yip's two children are adults, and were referred to at trial as "Jenny" and "Ricky". Jenny was born in July 1967 and is about 45 years old. Ricky was born in September 1968 and is about 44 years old. Ms. Yip, Jenny, and Ricky are referred to together as Mr. Ho's "First Family".

[24] Mr. Ho began working in the construction industry in Hong Kong in about 1959. In the early years of their marriage, Ms. Yip worked outside the home to earn spending money, in jobs like soldering electronic equipment and assembling plastic flowers.

[25] By 1978, Mr. Ho had formed his own business with a partner, and the business was specially approved by the Hong Kong government so that it could participate in government tenders. The business worked with port and water work projects. Ms. Yip no longer worked outside the home.

[26] Ms. Chen finished high school in China in the summer of 1979 and started working as an apprentice clerk in a national food store. Including bonuses, she received on average about 80 RMB per month. That was enough to support a five-person family in China.

[27] Mr. Ho and his First Family moved to Vancouver in late 1983. They left Hong Kong because Mr. Ho was concerned about what would occur in 1997 when Hong Kong was returned to China, and because Mr. Ho thought that the children would get a better education in Canada.

- [28] Mr. Ho qualified to be a Canadian immigrant as an entrepreneur, and invested in a restaurant. He then built two houses. One was for resale, and the other was for Mr. Ho and his First Family, and is referred to as the "48th Avenue House". Mr. Ho suffered a loss on the restaurant investment and on the house built for resale.
- [29] In January 1984, Ms. Chen married Mr. Shu, who was a co-worker at the national food store.
- [30] In 1984, Mr. Ho established a B.C. company named "H & Y Developments Limited" ("H & Y"). The initials came from the first letter in his last name of "Ho" and the first letter of the last name of "Yip". Mr. Ho and Ms. Yip were the original shareholders.
- [31] Mr. Ho testified that in 1985 he arranged with his accountant for H & Y to be turned into a trustee company, holding property for his three First Family members and Mr. Ho. Mr. Ho testified that he felt that his First Family should have a share in the property because they had been with him in good times and bad. Mr. Ho testified that he and the First Family members signed a trust document and gave it to H & Y's accountant, and kept an unsigned copy with the H & Y files. Mr. Ho testified that he could not find a signed copy, and that the accountant involved has not been working since at least 2002. Mr. Ho testified that Jenny was almost 18 years old, and Ricky almost 17 years old, at the time the trust document was signed, and that they signed on their own behalves.
- [32] The evidence included an unsigned agreement dated April 1, 1985 between Mr. Ho and the three members of his First Family as the four owners, and H & Y as trustee ("Unsigned H & Y Trust Agreement"). It states that H & Y will not dispose of any of the properties held by it without written instructions from the owners, that it will pay all the financial charges against the property and keep a true record, that it will maintain the property, and that it will give the owners an accounting of rent on written request. The Unsigned H & Y Trust Agreement does not provide any particulars of the property, but it appears that around this time, H & Y was registered owner of property at 718 - 720 West Broadway ("Broadway Heather Property").
- [33] Mr. Ho became a Canadian citizen in late 1987. Starting that year, Mr. Ho spent most of his time in Hong Kong, and filed Canadian income tax returns on the basis that he was not a resident of Canada. He had been unable to make a living in Canada and went back to Hong Kong to do business.
- [34] Mr. Sze has been a chartered accountant in Canada since 1977. He is fluent in Cantonese, speaks a little Mandarin, and can read some Chinese. Since 1989, Mr. Sze has acted for Mr. Ho, the three members of Mr. Ho's First Family, and

H & Y. Mr. Sze acted for Ms. Chen preparing tax returns for the years 2002 to 2008. Mr. Sze's work consisted primarily of preparing annual Canadian income tax returns, and he usually met with Mr. Ho in April of each year to obtain the necessary information and signatures. At the time he started working for Mr. Ho and Mr. Ho's First Family, Mr. Sze saw tax returns for prior years which were on the basis that

H & Y was the legal owner of properties but held them as a bare trustee for Mr. Ho and the three members of Mr. Ho's First Family.

[35] Raymond was born in June 1989 to Ms. Chen and her then husband Mr. Shu.

[36] H & Y became registered owner of 2827 - 2829 West Broadway ("Eastern Broadway Property") by a sale completing on December 15, 1989. The purchase price was \$768,000.

[37] H & Y became registered owner of 2837 - 2841 West Broadway ("Western Broadway Property") by a sale completing on December 29, 1989. The purchase price was \$800,000.

[38] I refer to the Eastern Broadway Property and Western Broadway Property together as the "Two Broadway Properties". I refer to the Two Broadway Properties and the Broadway Heather Property together as the "Three Broadway Properties".

[39] By 1990, Mr. Ho and Ms. Yip had returned to live in Hong Kong. They reported to Canadian income tax authorities that they were not resident in Canada for the period beginning February 28, 1990.

[40] As non-residents, Mr. Ho and Ms. Yip were liable to pay tax on income earned in Canada. This is in contrast to residents, who are liable to pay tax on income earned worldwide. As non-residents, Mr. Ho and Ms. Yip were liable to pay income tax at the flat rate of 25%, rather than the varying rates up to almost 50% payable by Canadian residents.

[41] Mr. Sze advised Mr. Ho to break all significant ties with Canada, such as owning property and bank accounts, to ensure that Canadian tax authorities considered him to be non-resident. Mr. Ho transferred the 48th Avenue House to Ricky. Jenny and Ricky stayed in Canada to finish their education.

[42] By the early 1990's, Mr. Ho's construction business had obtained the highest level of license from the Hong Kong government. By that time, Mr. Ho was living in a big house and drove nice cars which he replaced every few years, and he did not worry about money. He invested profitably in real estate.

[43] In 1990 and 1991, Ms. Chen was working at her own business selling children's food wholesale, as well as at the national food store.

[44] By 1992, Mr. Ho was providing Ms. Yip with 50,000 HKD per month for spending money. That is roughly equal to \$7,000 CAD per month.

[45] In 1992, Ms. Chen was earning over 3,000 RMB per month at the national food store. The job was referred to as an "iron rice bowl" position, meaning workers expected to be paid no matter what were the economic conditions because the company was owned by the state.

[46] In 1992, Ms. Chen was hospitalized for three months, and commenced an unpaid leave from her position at the national food store. She was entitled to life insurance and medical and pension benefits during the unpaid leave.

- [47] In late 1992, Ms. Chen separated from her husband, Mr. Shu. Ms. Chen did not return to work at the national food store. She and Raymond stayed with Ms. Chen's mother for a period. Ms. Chen then moved to Zhuhai, China, and Raymond remained with Ms. Chen's mother. Ms. Chen testified that she wanted to operate her own business, and did not want to go back to work at the national food store.
- [48] Jenny reported to Canadian income tax authorities that she was not resident in Canada starting March 15, 1993.
- [49] At some point between 1987 and 1993, Mr. Ho opened an account at the UBS bank in Hong Kong ("UBS Ho Account") and at the HSBC bank in Hong Kong ("HSBC Ho Account"). Mr. Ho understood that UBS was a large and dependable Swiss investment bank. Mr. Ho is not able to write cheques on the UBS Ho Account, but can direct money to be transferred to another account which permits cheques such as the HSBC Ho Account.
- [50] The funds in the UBS Ho Account were invested in a portfolio of Mr. Ho's design, consisting of cash, and potentially bonds, shares, and term deposits. Over the period that it has been open, the UBS Ho Account has mainly consisted of cash or term deposits, although at times as much as two-thirds of the value has been in bonds. Mr. Ho wanted the UBS Ho Account to have minimal risk unless there was a high probability of making a profit.
- [51] Mr. Ho testified that he considered the UBS Ho Account and the HSBC Ho Account to be "family assets" for himself and his First Family members.
- [52] Mr. Ho began retiring in late 1993, when he was about 50 years old. He had been working long hours for many years and had accumulated significant wealth. His net worth was between 15 and 20 million USD. In 1993, Mr. Ho received the equivalent of about \$1 million CAD from his company, which he deposited into the UBS Ho Account and the HSBC Ho Account. Jenny was about 24 years old and living in Hong Kong, and Ricky was about 23 years old and living in Vancouver.
- [53] In around 1993, Mr. Ho formed a sexual relationship with a woman in Hong Kong who worked for a hotel massage business. Mr. Ho took pity on her because he understood she had two children and her estranged husband did not pay child support. Mr. Ho paid her 10,000 HKD a month and lent her about 350,000 HKD for the deposit on a flat in Hong Kong. She repaid only about 30,000 HKD, but they lost contact after Mr. Ho came to Canada in 1997, and she might have repaid more if they had stayed in contact.
- b) Ms. Chen and Mr. Ho Meet
- [54] The parties met in Zhuhai, China in late 1993. Mr. Ho lived in Hong Kong, and it was his first visit to Zhuhai. He was winding down his business, and he went to Zhuhai for pleasure. It takes about 90 minutes to travel from Hong Kong to Zhuhai and goods cost much less in Zhuhai than in Hong Kong.

- [55] Mr. Ho went to Zhuhai with business associates, one of whom had an intimate relationship with Ms. Chen's sister. Mr. Ho met Ms. Chen when she attended a meal with a number of diners including her sister. At the time, Ms. Chen had a boyfriend from Macau, and Mr. Ho had a marital relationship with Ms. Yip and a further relationship with the girlfriend who worked for the massage business.
- [56] In 1994, Mr. Ho and his business partner sold their company, and Mr. Ho received about 3 million HKD for his interest, payable over a few years. Mr. Ho deposited the sale proceeds in the UBS Ho Account and the HSBC Ho Account.
- [57] The evidence included a copy of a letter which suggests that the Unsigned

H & Y Trust Agreement was executed. Mr. Sze sent a facsimile letter dated

August 2, 1994 to Nelson Tsui, a lawyer. Mr. Sze understood that Mr. Tsui was representing the First Family and Mr. Ho. It is not clear what legal work Mr. Tsui was doing at that time. The letter refers to "David Ho's Family Agreements", and describes H & Y as "Bare Trustee", properties under the name of trustee as the Three Broadway Properties, and the principal residence of the 48th Avenue House.

- [58] Mr. Ho started travelling from Hong Kong to Zhuhai about once or twice a month. He enjoyed the food, low prices, and karaoke.
- [59] Mr. Ho testified that in August 1994, he paid for Ms. Chen to stay one night in a hotel. Mr. Ho testified that around that time, Ms. Chen told him that she had broken up with her boyfriend from Macau, she wanted to go into the glass bead business, and she was going to Guangzhou to look for business opportunities.
- [60] Mr. Ho testified that he lent Ms. Chen 5,000 RMB for the business. Mr. Ho understood that the man from Macau had been paying Ms. Chen 2,000 RMB per month. Ms. Chen testified that her Macau boyfriend paid her different amounts, but roughly 2,000 RMB per month.
- [61] Ms. Chen testified that Mr. Ho asked her to stay behind in Zhuhai rather than go to Guangzhou for business. She testified that Mr. Ho told her that he was separated from his wife and it was just a matter of time before they were divorced, and that he had also separated from his girlfriend. Ms. Chen testified that Mr. Ho said that he would take care of her for the rest of her life, although she was unsure if he would actually do as he said.
- [62] Mr. Ho testified that a few weeks later, Ms. Chen told him that she had gone to Guangzhou and there were not too many opportunities, but she did not return the 5,000 RMB to him.
- [63] Ms. Chen testified that she went to Guangzhou but did not think the business opportunities were worth pursuing at that time. She testified that she thought Mr. Ho was a good, responsible person and looked younger than he was. She testified that she would have continued to look for business opportunities but did not do so because Mr. Ho asked her to stay in Zhuhai, and she was interested in him.

- [64] Mr. Ho began going to Zhuhai frequently, and Ms. Chen accompanied him to karaoke.
- [65] By the end of September 1994, Mr. Ho and Ms. Chen had formed a sexual relationship. Mr. Ho testified that he did not intend to end his marriage to Ms. Yip, but simply to enjoy his time with Ms. Chen.
- [66] Ms. Chen told Mr. Ho that she had a son, and that she had debts totalling over 30,000 RMB. Ms. Chen testified that she was in debt about 30,000 RMB at the time she became intimate with Mr. Ho, which she had incurred for living expenses in Zhuhai. Ms. Chen testified that her family money was with her husband who operated a business, but she did not go and get the money to pay the debt because she did not want to see her estranged husband, and because Mr. Ho told her he would give her the money to pay the debt.
- [67] Mr. Ho testified that he gave Ms. Chen 10,000 RMB, thinking that he would be with her for a few months and that it would help her in that period.
- Ms. Chen testified that Mr. Ho paid her 10,000 RMB per month, and she in turn paid her mother 2,000 RMB for the support of Raymond.
- [68] The parties disagreed about how much time they spent together in the first months of their relationship. Ms. Chen testified that Mr. Ho spent 5 or 6 days a week with her.
- [69] In contrast, Mr. Ho testified at trial that he spent 6 or 7 nights a month with Ms. Chen in the period of late 1994. However, he agreed with the statement in his affidavit dated February 23, 2010 that in late 1994, he and Ms. Chen started living together about 3 to 4 days per week. Mr. Ho testified that he spent the balance of his time in Hong Kong with Ms. Yip, and that he did not tell Ms. Yip about Ms. Chen.
- [70] Ms. Yip testified that in the period 1994 to 1997, she and Mr. Ho spent about one-third of their time in Canada, staying in the 48th Avenue House. She testified that when they were in Hong Kong, they stayed at a home referred to in the evidence as Yau Yat Chuen. Ms. Yip testified that Mr. Ho was at home about 4 or 5 days a week.
- [71] Ms. Chen and Mr. Ho initially spent their time together at a hotel. Ms. Chen spent the other time living at her younger sister's home, but would leave when the younger sister's boyfriend came for a visit.
- [72] Mr. Ho paid Ms. Chen 10,000 RMB per month for the period starting in October 1994. Mr. Ho testified that a waitress in Zhuhai would make 300 or 400 RMB per month, and that 10,000 RMB per month was more than the salary paid to senior bank managers at the time. Mr. Ho testified that he understood that in addition to supporting herself and paying debts, Ms. Chen was also supporting her parents and Raymond, and that Raymond lived with Ms. Chen's mother in a location about a day's travel from Zhuhai.
- [73] Mr. Ho gave Ms. Chen expensive jewelry from time to time, commencing in 1994 or 1995 and continuing throughout their relationship.

- [74] In the beginning of their relationship, the parties spoke to each other in Mandarin, but later Mr. Ho taught Ms. Chen Cantonese, and they spoke to each other in Cantonese.
- [75] Mr. Ho testified that Ms. Chen suggested that he rent an apartment in Zhuhai. He testified that he rented a two bedroom apartment ("Zhuhai Rental Apartment"), approximately 600 square feet in area, for the period beginning around January 1995, at a rate of about 1,700 RMB per month. Mr. Ho testified that he considered Ms. Chen at this time to be his "kept woman". She was responsible for keeping the Zhuhai Rental Apartment clean.
- [76] Ms. Chen testified that Mr. Ho said that he would give her a warm home, and then rented and furnished the Zhuhai Rental Apartment. Ms. Chen testified that she paid about 1,000 RMB per month for the management, the garbage disposal fee, water bill, hydro bill and phone bill, and about a further 1,000 RMB per month for food and snacks. Ms. Chen testified that the telephone bill was often high because Mr. Ho made calls to Hong Kong. Ms. Chen testified that from the 10,000 RMB per month she received from Mr. Ho, she gave her mother 2,000 RMB, spent about 2,000 RMB on the home, spent about 2,000 RMB for her own meals outside the home, and saved 3,000 to 4,000 RMB for debt repayment.
- [77] Mr. Ho testified that when he was with Ms. Chen, he paid expenses including groceries and cleaning supplies. A typical day together consisted of dim sum tea until about 1 p.m., karaoke singing from 1 to 6 p.m., dinner from 6 to 7 p.m., more singing from 7 or 8 p.m. to 11 p.m., and then home. Mr. Ho testified that after a few months, he had feelings for Ms. Chen.
- [78] Mr. Ho fully retired in 1995, when he was about 52 years old. Ms. Chen did not have any involvement with Mr. Ho's construction company.
- [79] Ms. Chen and Mr. Shu were divorced in June 1995.
- [80] Ms. Chen was granted custody of Raymond, who remained with Ms. Chen's mother. Ms. Chen testified that she and Mr. Shu had about 1.4 million RMB in combined assets. Ms. Chen testified that she did not pursue her claim to those assets because she thought her husband would seek custody of Raymond if she did so. She testified that Mr. Shu offered to pay support for Raymond but she did not insist.
- c) Ms. Chen and Canada
- [81] Mr. Ho testified that around 1995, it was common for Chinese women to want to leave China and immigrate to places like Hong Kong, Macau, and Canada. Mr. Ho testified that he and Ms. Chen discussed that they could travel more widely if she had a passport from a country other than China. At the time, it was difficult to travel freely with a Chinese passport.
- [82] The parties gave conflicting evidence about which of them was more involved in arranging a "fake" marriage to enable Ms. Chen's immigration to Canada.

- [83] Mr. Ho testified that Ms. Chen told him that her younger sister knew someone who could arrange a "fake" marriage in Macau for immigration purposes, which could lead to a Portuguese passport. Mr. Ho testified that later, he was told that Ms. Chen's sister's contact could arrange a "fake" marriage for immigration to Canada.
- [84] Mr. Ho testified that Ms. Chen asked him which place would be best for her, and he told her he thought a Canadian passport was best and would be better than a Portuguese passport. Mr. Ho testified that he went with Ms. Chen to meet with her younger sister's ex-boyfriend, who was a policeman who said that he could make the arrangements.
- [85] Mr. Ho testified that he helped Ms. Chen fill in forms and gave her \$30,000 or \$35,000 CAD for the "fake" marriage to a Canadian, but apart from that and meeting with the policeman, he was not involved in the planning.
- [86] In contrast, Ms. Chen testified that Mr. Ho found the Canadian man to enter into the "fake" marriage. Ms. Chen testified that Mr. Ho said he would marry her later on.
- [87] By mid-1996, Ms. Chen had commenced her application to immigrate to Canada with Raymond.
- [88] The parties gave conflicting evidence about whether the plan was for Ms. Chen to stay in Canada only long enough to obtain a Canadian passport, or for the parties to make a home together in Canada.
- [89] Mr. Ho testified that they discussed that Ms. Chen would immigrate to Canada and stay long enough to obtain a Canadian passport. Mr. Ho testified that he told Ms. Chen she could stay temporarily in the 48th Avenue House. Mr. Ho testified that he thought that to get a Canadian passport, Ms. Chen would have been required to stay in Canada for less than three years. However, Mr. Ho stated in his February 23, 2010 affidavit that in April 1996, when the parties' relationship had grown more stable, they decided that Ms. Chen and Raymond should immigrate to Canada, and the appeal of this arrangement was that Mr. Ho could have the family life he missed earlier in his life.
- [90] In contrast to Mr. Ho, Ms. Chen testified that Mr. Ho suggested that they form a family in Canada, that she should get a Canadian passport for travelling, and that Canada was a good place to retire.
- d) Zhuhai Flat Purchase
- [91] Mr. Ho testified that he continued to rent the Zhuhai Rental Apartment until January 1997.
- [92] Mr. Ho testified that by late 1996, the housing market in Zhuhai had been falling fast, and he thought an apartment would be a good investment opportunity, especially in light of the annual rental of over 20,000 RMB for the Zhuhai Rental Apartment.

- [93] Mr. Ho purchased an apartment in Zhuhai for 500,000 RMB ("Zhuhai Flat"), which was equivalent to over 400,000 HKD. The initial purchase documents were in Mr. Ho's name alone. Mr. Ho supplied the purchase monies, but the property was registered solely in Ms. Chen's name.
- [94] Ms. Chen testified that the Zhuhai Flat was in her name for two reasons: because Mr. Ho meant it as security for her, and because she would pay less property purchase tax as a Chinese resident than Mr. Ho would pay as a Hong Kong resident. Ms. Chen testified that after the Zhuhai Flat was purchased, Mr. Ho told her it was a guarantee of his love to her, and that he told her many times that it was security or insurance for her. Her evidence at trial differed from her evidence at Examination for Discovery about whether she requested that he put the Zhuhai Flat in her name.
- [95] Mr. Ho testified that Ms. Chen telephoned him and asked why the Zhuhai Flat was not in her name. He said that he explained that he would have a lower rate of tax because he was a Hong Kong resident and she was a resident of China, but after further discussion with her, he thought it would give her more "face" if the Zhuhai Flat was in her name, and he decided to put it in her name.
- [96] Mr. Ho denied that he told Ms. Chen he wanted to give her some security, and testified that he did not mean to be giving the Zhuhai Flat to her and did not tell her it was a gift. He testified that she had already commenced her application to immigrate to Canada, and he expected to spend a lot of time in Hong Kong and intended to use the Zhuhai Flat himself when he went to Zhuhai for fun, or after Ms. Chen obtained a Canadian passport and the two of them travelled to Zhuhai together.
- [97] Ms. Chen was married to Mr. Philip Yue on December 1, 1996 at the place of her household registration in China. Ms. Chen testified that she did not know Mr. Yue prior to the marriage, and only saw him during the period of about four days involved in travelling to and from the place of her household registration for the marriage ceremony.
- [98] Following the marriage, Mr. Yue sponsored Ms. Chen and Raymond to come to Canada, and Ms. Chen received the visa around May 1997. Ms. Chen testified that she lied in the Canadian immigration papers because she wanted to come to Canada with Mr. Ho.
- [99] By agreement dated July 18, 1997, World Base Properties Limited ("World Base") purchased the leasehold interest in property known as Flat C, 5th floor, Block 1 (tenancy ending in 2887) and car parking space No. 8 (tenancy ending in 2032 with a further 75 year renewal right) of Clovelly Court, No. 12 May Road, Hong Kong ("May Road Home") for 31.2 million HKD. Mr. Ho was the signatory on behalf of World Base. Mr. Ho testified that the May Road Home was purchased at the peak of the market.
- [100] Mr. Ho formed World Base to purchase the May Road Home, and Ms. Yip and Mr. Ho each owned half of the shares in World Base. Ms. Yip and Ricky moved into the May Road Home.

[101] Ms. Chen and Raymond immigrated to Canada, landing at Montreal on August 13, 1997. Raymond was eight years old. Mr. Ho was already a Canadian citizen.

[102] Mr. Ho testified that he came to Canada with Ms. Chen and Raymond to help them with the initial settling in, but that he did not plan to move back to Canada.

Mr. Ho testified that he thought he would come to visit Ms. Chen and Raymond once or twice a year for two or three months at a time. Mr. Ho testified that he had met Raymond about 3 or 4 times before the trip to Canada.

[103] Ms. Chen, Raymond, and Mr. Ho stayed in Montreal for about a week before coming to Vancouver. Ms. Chen's sister had arrived in Montreal before they did, and she also came to Canada through a "fake" marriage. Ms. Chen testified that her sister's "fake" marriage and immigration application began after Ms. Chen's, but Ms. Chen's "fake" marriage took longer to result in a visa.

[104] Ms. Chen testified that she went with Mr. Ho to a law office in Montreal and signed a document. She testified that Mr. Ho told her that it was an agreement regarding separation from Mr. Yue, but that she did not understand the document and it was not translated for her. She testified that she understood it would be used to dissolve the "fake" marriage.

[105] Initially, Mr. Ho, Ms. Chen, and Raymond stayed in the 48th Avenue House, but when Ms. Yip came to Vancouver, Mr. Ho stayed with Ms. Yip at the 48th Avenue House while Ms. Chen and Raymond stayed in an apartment. Mr. Ho did not return to Hong Kong with Ms. Yip. Mr. Ho testified that Ms. Yip was unhappy about that, and so Mr. Ho left the 48th Avenue House after a few weeks. Mr. Ho and Ms. Chen used a Mercedes car which was registered in Ricky's name.

[106] Mr. Ho testified that after he and Ms. Chen arrived in Vancouver, it became clear to him that Ms. Chen had difficulty finding her way around in the Vancouver area and that her English skills were sufficiently poor that she wanted Mr. Ho to help with matters like arranging Raymond's schooling.

[107] Mr. Ho testified that he really liked Raymond and decided to stay for some months. Mr. Ho enrolled Raymond in school, helped him with English and schoolwork, and found an English tutor for him. Mr. Ho testified that he looked after Raymond's schooling and activities and buying meals, and Ms. Chen looked after his clothing, washing, ironing, and the like.

[108] Mr. Ho testified that from 1997 until their separation in 2009, he considered Ms. Chen to be his girlfriend.

[109] In early September 1997, Ms. Chen opened an account in her own name at Coast Capital Savings in Richmond, B.C. ("Coast Capital Account").

e) Blundell Townhouse Purchase

- [110] On September 26, 1997, about six weeks after she arrived in Canada, Ms. Chen became registered owner of a townhouse on Blundell Road, in Richmond, B.C. ("Blundell Townhouse"). The purchase price was about \$345,000, and it was subject to a mortgage for about \$180,000. As a result, the equity was \$165,000. Ms. Chen was the borrower under the mortgage.
- [111] The parties gave conflicting evidence about whether the Blundell Townhouse was a gift to Ms. Chen, or whether it was registered in her name for tax reasons only and was intended to remain Mr. Ho's property.
- [112] Ms. Chen testified that Mr. Ho said that the Blundell Townhouse would give her a sense of security, and also was a gift.
- [113] Mr. Ho testified that he understood that because he was a non-resident of Canada for tax purposes, he should avoid ties to Canada such as having property, vehicles, bank accounts, or credit cards registered in his name. He testified that he did not think doing any of these things would be a major concern because his principal residence and his wife, Ms. Yip, were in Hong Kong, but that doing any of these things could require him to give explanations to tax authorities.
- [114] Mr. Ho testified that he paid the purchase price for the Blundell Townhouse, but because he was a non-resident of Canada, he used Ms. Chen's name, and that he did not intend to make a gift of the Blundell Townhouse to Ms. Chen.
- [115] Mr. Ho testified that at the time of the purchase of the Blundell Townhouse, he told Ms. Chen that she must sign a declaration that the Blundell Townhouse belonged to him and that she was just a trustee. Mr. Ho testified that Ms. Chen was very unhappy about this, and told him that he did not trust her. Mr. Ho said that Ms. Chen told him that she knew that the Blundell Townhouse belonged to him, and he left the matter undocumented for years.
- [116] Ms. Chen did not agree with Mr. Ho's assertions that she was just a trustee of the Blundell Townhouse.
- [117] Mr. Ho paid all the expenses related to the Blundell Townhouse, including maintenance fees, property taxes, and utilities.
- [118] Ms. Chen's sister stayed with Mr. Ho, Raymond, and Ms. Chen in the Blundell Townhouse from about November 1997 to October 1998. Ms. Chen testified that, during that time, Ms. Chen's sister did about 60% of the housework, and Ms. Chen did the rest.
- [119] Ms. Chen testified that she wanted to learn English, but that Mr. Ho discouraged it, saying that it was unnecessary because he could look after things in English. In contrast, Mr. Ho testified that he assisted Ms. Chen in enrolling in English lessons and in taking her to classes.

- [120] Ms. Chen testified that when they came to Canada, Mr. Ho gave her \$400 one month, and then \$900 a month for a few months. Mr. Ho testified that the amount of money he was paying Ms. Chen monthly gradually increased.
- [121] Frank Sze Ltd. ("FSL"), a chartered accountancy firm, filed income tax documents for Mr. Ho for 1997 through 2008. All of these documents are on the basis of Mr. Ho being a non-resident of Canada. For the years prior to 2000, they refer to income from the Three Broadway Properties, and after that, they refer to income from the Two Broadway Properties.
- [122] In 1997, the gross rents of the Three Broadway Properties were stated in income tax documents to be about \$263,000, the net income before adjustments about \$130,000, and Mr. Ho's one-quarter share about \$32,500. The largest claimed expense is property taxes of about \$74,500. The expenses claimed include about \$8,400 in management and administration, and \$7,400 for travel. The "NR4 Statement of Amounts Paid or Credited to Non-Residents of Canada" form describes the disbursing agent or payor as Mr. Sze, and gives as Mr. Ho's address the May Road Home.
- [123] Starting in 1997, Mr. Ho has personally used the net rental proceeds from the Three Broadway Properties (and later the Two Broadway Properties), and arranges for payment of the Canadian income tax due by himself and each First Family member for their notional share of the rental income. Mr. Ho testified that he "paid them back, especially [Ms. Yip]" in Hong Kong, and that none of the First Family members have complained about their failure to receive their share of the income.
- [124] Mr. Ho testified that by the time he, Ms. Chen, and Raymond had been in Canada for six months, which would have been around February 1998, he felt close to Raymond and treated Raymond as his own son.
- [125] Mr. Ho went back to Hong Kong in early 1998. He testified that Ms. Yip was unhappy because he had been away from Hong Kong for so long, and there was friction between them. Ms. Yip testified that in 1998, she ran into Mr. Ho in a restaurant with a woman and a boy, and she guessed that Mr. Ho was living with the woman and boy.
- f) Ho/Yip Divorce Agreement
- [126] Mr. Ho and Ms. Yip both executed a document entitled "Deed" dated February 17, 1998 ("Ho/Yip Divorce Agreement"). The Ho/Yip Divorce Agreement is in English, and is stated to have been "interpreted" to both Mr. Ho and Ms. Yip.
- [127] The Ho/Yip Divorce Agreement provides that the parties agreed to do a number of things "upon a dissolution of their marriage", but their marriage has not been dissolved, and so those obligations have not come into effect. The significance of the Ho/Yip Divorce Agreement is both what it provides will be done with certain assets, and Ms. Yip's evidence about why she signed the Divorce Agreement.

[128] Mr. Ho testified that Ms. Yip was unhappy that he had spent so much time in Canada and thought that he did not care for Ms. Yip any more, and told him that she wanted him to give her some financial assurance to make her feel more secure.

Mr. Ho testified that both before and after the signing of the Ho/Yip Divorce Agreement, he gave Ms. Yip spending money of 50,000 HKD per month.

[129] Mr. Ho testified that, prior to signing the Ho/Yip Divorce Agreement, he had transferred his shares in World Base (the owner of the May Road Home) to Ms. Yip. Mr. Ho testified that he wanted some documentation to show that there had been a transfer of assets. However, Mr. Ho testified that in April 2009, about 11 years after signing the Ho/Yip Divorce Agreement, he transferred his World Base shares to Ricky at Ms. Yip's request, and Ms. Yip testified that Mr. Ho owned shares in World Base up until around 2010. This suggests that neither Mr. Ho nor Ms. Yip considered Mr. Ho's pre-February 1998 transfer of World Base shares to Ms. Yip to be a valid transaction.

[130] In contrast to Mr. Ho, Ms. Yip testified that the parties have never had marital problems. She testified that the differences they had around February 1998 were that Mr. Ho wanted to go to Canada with his girlfriend. Ms. Yip testified that Mr. Ho was going to go far away, and she wanted to hold 8 million HKD in cash as security, and she understood that it would be illegal for her to have this money without signing a document like the Ho/Yip Divorce Agreement. Ms. Yip testified that her main purpose in signing the Ho/Yip Divorce Agreement was to obtain the 8 million HKD. Ms. Yip testified that Mr. Ho paid her the 8 million HKD in two installments about six months later. Oddly, the Ho/Yip Divorce Agreement does not refer to such a payment.

[131] The recitals to the Ho/Yip Divorce Agreement set out that each has disclosed to the other full financial details, each has had the benefit of competent and independent legal advice, and each agreed to enter into it "to achieve a full and final settlement of each other's claims for ancillary relief against each other upon a dissolution of their marriage." The terms of the Ho/Yip Divorce Agreement also provide that Mr. Ho and Ms. Yip were the shareholders and directors of World Base, Litmus Limited ("Litmus"), and Yacca Development Limited ("Yacca"); that World Base owned the May Road Home, Litmus owned a private car, and Yacca owned the Village Garden Property, being an apartment and car parking space in Kowloon, Hong Kong.

[132] The Divorce Agreement provides that the parties agree to do a number of things "upon a dissolution of their marriage", including the following:

- a) Mr. Ho shall transfer all his interest in World Base to Ms. Yip, and World Base is registered owner of the May Road Home subject to a mortgage of 2 million HKD, with the intent that Mr. Ho shall have no interest whatsoever in either World Base or the May Road Home;
- b) Ms. Yip shall transfer to Mr. Ho all her interest in Litmus Limited, to the intent that she would have no interest in Litmus or the private car;

- c) Ms. Yip shall transfer to Mr. Ho all her interest in Yacca, with the intent that she shall have no interest in the Village Garden Property and Yacca, and that Mr. Ho shall pay Ms. Yip 10 million HKD on his sale of the Village Garden Property;
- d) Ms. Yip shall waive all her rights in assets and properties in Canada whether in her name or a company name; and
- e) Ms. Yip shall waive all her rights to bank deposits held jointly in the name of Ms. Yip and Mr. Ho.

[133] The Ho/Yip Divorce Agreement also provided that the parties would execute certain documents (such as transfers of shareholdings) at the time of executing the Ho/Yip Divorce Agreement, and irrevocably appoint the other party to fill out such documents. It also provides that its terms are "in full and final settlement of each other's claims for ancillary relief against the other upon dissolution of their marriage."

[134] Neither Ms. Yip nor Mr. Ho has sought a divorce from the other.

[135] Ms. Chen testified that after the Ho/Yip Divorce Agreement was entered into, Mr. Ho began paying her \$1,500 per month.

[136] Mr. Ho testified that he enjoyed spending time with Raymond and enjoyed singing karaoke in the Vancouver area. He testified that in light of that and of the friction with Ms. Yip, he started spending more time in B.C., staying five months at a time, but returning to Hong Kong two to three times a year for a month or two.

[137] Ricky left Vancouver in May 1997 and moved to Hong Kong. Prior to that, he ran H & Y, collecting rent, handling tenants, and running renovation projects. Ricky created a database management system to track H & Y income and expenses, and that system was used for a couple of years, although it was not used when there was a property management company. Ricky used income from the Three Broadway Properties to pay his tuition and living expenses.

[138] Starting around April 1998 and continuing until 2004 or 2005, H & Y was managed by a property management firm.

[139] In July 1998, when Ms. Chen had been in Canada about a year, the principal of Ms. Chen's mortgage on the Blundell Townhouse was reduced by almost \$135,000. As a result, the equity in the property would have been about \$300,000.

[140] In 1998 or 1999, Ms. Yip transferred her shares in H & Y to Mr. Ho, and he became the sole shareholder.

[141] H & Y sold the Broadway Heather Property in 1999. Mr. Ho deposited the net sale proceeds in one of his Hong Kong accounts, either the UBS Ho Account or the HSBC Ho Account.

- [142] Ms. Chen testified that her mother died in January 1999, leaving an estate of about 600,000 RMB. Ms. Chen testified that her mother had directed Ms. Chen how to distribute the funds, and she transferred 30,000 RMB each to four people: Ms. Chen, her father, her older sister, and her younger sister. Ms. Chen testified that the balance and a property was for her younger brother, but that Ms. Chen kept that in safekeeping for him.
- [143] Mr. Ho testified that around late 1999, Ms. Chen's mother died, and soon afterwards, Ms. Chen told him that she had received some money from her mother. He testified that Ms. Chen had 30,000 USD and 70,000 RMB, which was a total of over 300,000 HKD, being over \$60,000 CAD. Mr. Ho argued that it was likely the money was not from Ms. Chen's mother, but instead represented Ms. Chen's savings from the funds he had been paying her monthly, and that Ms. Chen had placed those funds with her mother like a bank. Mr. Ho testified that he had seen Ms. Chen's mother's home, and it was not consistent with her mother having that much money of her own.

g) HSBC Joint Account

- [144] Mr. Ho testified that Ms. Chen wanted to put the money which she said she had received from her mother in a bank account in Hong Kong, but she did not have such an account. He testified that he had the HSBC Ho Account, and the HSBC required a minimum deposit of 1 million HKD to set up a free-standing account. Mr. Ho testified that he opened a joint account with Ms. Chen ("HSBC Joint Account"), and because that account existed, Ms. Chen was able to open an account in her sole name without the minimum balance.
- [145] Mr. Ho testified that the primary reason he opened the HSBC Joint Account was to enable Ms. Chen to open her own account, but another reason for opening it and depositing funds into it was to demonstrate to Ms. Chen that he trusted her. Mr. Ho denied that he intended to make a gift to Ms. Chen of the funds in the HSBC Joint Account, although he testified that he understood that if he died she could access the balance in that account. Mr. Ho testified that all of the money in the HSBC Joint Account belonged to him, and that Ms. Chen did not deposit any money into it at any time.
- [146] Ms. Chen testified that Mr. Ho told her that the HSBC Joint Account was so that if anything happened to Mr. Ho, she would have access to money for emergency use, and it would give her some security. Ms. Chen testified that Mr. Ho told her that if anything happened to him, she should remove all the funds and put them in an account in her sole name. Ms. Chen testified that she deposited funds into the HSBC Joint Account from time to time, but the only deposit she particularly remembered was around December 2000 of about 93,000 HKD (about \$12,000 CAD).

[147] Ms. Chen met a woman named May Chan through her son's sports activities, and Mr. Ho told Ms. Chen to be wary of Ms. Chan. Later, Ms. Chen invested \$280,000 CAD with Ms. Chan without telling Mr. Ho at the time. Ms. Chen testified that those funds actually belonged to her aunt and brother. Later, Ms. Chen concluded that Ms. May Chan had cheated her, and Ms. Chen obtained return of the investment, with Mr. Ho assisting her to obtain some of it.

[148] Mr. Ho testified that a little over a year after the signing of the Ho/Yip Divorce Agreement, and therefore in early 1999, there ceased to be a problem between him and Ms. Yip.

[149] The evidence included financial statements for H & Y for the ten years from March 31, 1999 to March 31, 2008. The financial statements are unaudited compilation reports from Mr. Sze's firm FSL. The statements for all ten years include the following notes:

1. General Information

The company acts as an agent for the Ho family's real estate investment. All the real estate properties are registered in the name of the company as a trustee. The members of the family are the true and beneficial owner of the properties. The liability for income taxes is to be accounted for by each member respectively.

2. Statement of Income

Since the company acts as an agent and bare trustee for the members of the Ho family, there are no revenue nor expenses for the year ended March 31, [1999, or appropriate year]. The Statement of Income is not prepared for this reason.

[150] In May 1999, when Ms. Chen had been in Canada almost two years, the principal of Ms. Chen's mortgage on the Blundell Townhouse was paid in full, with a final payment of about \$42,000. The effect was that the net equity was in the range of \$345,000.

h) Guardianship of Raymond

[151] The parties entered into a guardianship agreement dated September 7, 2000 which provided that Mr. Ho became a legal guardian of Raymond. In addition, the parties arranged to change Raymond's last name from that of his birth father, "Shu", to "Ho".

[152] In September 2000, the national food store from which Ms. Chen was on unpaid leave was privatized into a shareholding company.

i) Blundell Trust Declaration and Blundell Chen/Ho Transfer

- [153] Ms. Chen executed two documents dated November 21, 2000 regarding the Blundell Townhouse. One is entitled "Trust Declaration", and I refer to it as the "Blundell Trust Declaration". It provides that Ms. Chen acknowledges that she held the registered interest in the Blundell Townhouse in trust for Mr. Ho, and that he paid all the money to acquire, maintain, and hold the property. It provides that she will execute a registrable transfer of the Blundell Townhouse to Mr. Ho, for him to use at his discretion.
- [154] The other document is a registrable transfer of Ms. Chen's interest in the Blundell Townhouse to Mr. Ho, which I term the "Blundell Chen/Ho Transfer". It states that the market value of the Blundell Townhouse is \$350,000, and that the transfer is for "one dollar and other good and valuable consideration". Both documents state that Mr. Ho's address is in Kowloon, Hong Kong.
- [155] Ms. Chen's signature on the Blundell Trust Declaration and Blundell Chen/Ho Transfer appears to have been witnessed by Ms. Adena Lee. Mr. Ho testified that his lawyer, Mr. George Wong, told him that he had referred Ms. Chen to another lawyer because Mr. Wong could not act for both Mr. Ho and Ms. Chen in the matter.
- [156] Ms. Chen testified that she did not understand the documents at the time, and signed them because Mr. Ho asked her to do so. When asked about whether someone else could have explained the documents to her, she testified that she would listen to what Mr. Ho told her, but not to what other people said to her. She testified that she thought the witness to the documents, Ms. Adena Lee, spoke to her partly in English and partly in Cantonese. Ms. Chen testified that at the time, her Cantonese was not great, and she did not understand most of what Ms. Lee said.
- [157] Ms. Chen testified that she understood that the situation prior to signing any documents was that if she passed away, the property would go to her next of kin. She testified that Mr. Ho told her that the effect of the documents would be that if she passed away, the property would revert to Mr. Ho, but the document would be effective only if she passed away. Ms. Chen testified that she did not fully understand such matters, and Mr. Ho spoke to her in both Mandarin and Cantonese to try to explain it to her.
- j) Ms. Chen's Employment
- [158] Ms. Chen ended her relationship with the national food store in December 2000. Essentially, her unpaid leave, which had commenced in 1992, came to an end. Ms. Chen testified that around that time, the company was going through changes, and wanted all its employees to return to work or be considered to have resigned. She testified that she chose not to return because she was living in Canada.
- [159] In Mr. Ho's non-resident tax return for 2000, the statement of real estate rentals refers to just the Two Broadway Properties.

[160] Mr. Ho testified that he had a non-resident bank account in Canada which he closed around the year 2000.

[161] Starting in 2000, H & Y paid a salary to Ms. Chen. Initially, the salary was around \$12,000. This was done to reduce income taxes, by "income-splitting", and so that Ms. Chen would obtain Canada Pension Plan credits, but Ms. Chen did not have any duties on behalf of H & Y. Mr. Ho paid all the income tax payable by Ms. Chen on that income, and she was not paid the salary.

[162] Ms. Chen held some time deposits with the HSBC in Hong Kong. She deposited 90,000 HKD on January 8, 2001, to mature 9 months later, and about 93,000 HKD (about \$12,000 CAD) on December 9, 2002, to mature 6 months later. She testified that these were funds that she was holding for her younger brother for his inheritance, and they were deposited into the HSBC Joint Account. She testified that in time she paid her younger brother using her savings from the monthly allowance from Mr. Ho.

k) Ronald's Birth

[163] Ms. Chen became a Canadian citizen in 2001.

[164] Ronald was born to Ms. Chen and Mr. Ho in December 2001. I refer to Ms. Chen, Raymond, and Ronald together as Mr. Ho's "Second Family". Mr. Ho was glad to have the opportunity to spend more time with Ronald than he had spent with Ricky and Jenny when they were young. A housekeeper assisted with Ronald until he was a month or two old.

[165] Mr. Ho testified that after Ronald was born, Ms. Chen did not mention any desire to take further classes in English. In contrast, Ms. Chen testified that after Ronald was born, she told Mr. Ho that she wanted to take further English classes, but he would not allow that.

[166] Mr. Ho testified that Ms. Chen initially nursed Ronald, but that he often changed diapers, fed Ronald bottle milk, bathed, and held him. Mr. Ho testified that Ms. Chen fed Ronald more than he did, and that he got up in the middle of the night to feed Ronald on only one or two occasions. In contrast, Ms. Chen testified that

Mr. Ho never changed Ronald's diapers, and did not know how to do that or to bathe him.

[167] Ms. Chen testified that starting in January 2002, Mr. Ho started paying her the monthly sum of \$2,000 CAD.

l) South Granville House Purchase

[168] The South Granville House was purchased in April 2002 for about \$1.143 million CAD, and was subject to a mortgage of about \$400,000. It is a large home, which is over 4,000 square feet in area and has 7 bedrooms. The contract of purchase and sale named Ms. Chen as the sole purchaser, but the property was registered in the names of Mr. Ho and Ms. Chen jointly.

- [169] Mr. Ho obtained the purchase funds from Hong Kong, from an account that he testified he considers an asset belonging to him and his First Family. Ms. Chen testified that \$200,000 CAD came from the HSBC Joint Account.
- [170] Mr. Ho testified that with the arrival of Ronald, he expected to spend more time in B.C., wanted to live in a bigger home, and planned to give the home to Ronald in the future. Mr. Ho testified that he thought that if his name were on title to the South Granville House, Ms. Chen would not be able to sell it without his cooperation. Mr. Ho testified that she indicated that she was unhappy that the property was to be registered in joint names rather than her name solely, and she was concerned that Ms. Yip could make a claim to the property on Mr. Ho's passing.
- [171] Mr. Ho testified that he did not intend to make a gift to Ms. Chen of an interest in the South Granville House. He testified that he intended that she would keep the interest in the home until Mr. Ho's passing, and would then pass it on to their son Ronald. Mr. Ho testified that he thought that Ms. Chen would receive Mr. Ho's interest in the South Granville House on the basis of the unwritten trust to provide it to Ronald, and that she would honour that because Ronald is her son. Mr. Ho testified that Ms. Chen agreed to make a will to pass the South Granville House to Ronald, but later refused to do so. Mr. Ho testified that he understood that as joint tenants, the survivor would obtain title, but he trusted that Ms. Chen would do what she had said. Mr. Ho paid the entire purchase price and has paid all the related expenses and the parties' living expenses.
- [172] Mr. Ho also testified that he asked Ms. Chen to sign a document to the effect that the South Granville House belonged to Ronald, but Ms. Chen refused to sign it. Mr. Ho also testified that he understood that Raymond was entitled to an interest in the South Granville House so long as he was living in it, and that Raymond could sign a document when he reached the age of 19 giving up his entitlement. Mr. Ho testified that he told Ms. Chen that he wanted Raymond to sign such a document, and Ms. Chen was unhappy about that idea.
- [173] Ms. Chen testified that at the time that the South Granville House was purchased, Mr. Ho talked to Ms. Chen about signing a document so that if anything happened to one of them, ownership would pass to the other, but that he later changed his mind and wanted the property to belong to Ronald if anything happened to Mr. Ho.
- [174] Mr. Ho testified that in the month that he and his Second Family moved into the South Granville House, Mr. Ho told Raymond that the house was bought for Ronald, and that Mr. Ho would make arrangements for Raymond in the future, such as giving him a down payment for a house or buying him a house, but that Mr. Ho had not yet decided what to do. Mr. Ho testified that Raymond agreed. Raymond would have been about 12 years old at this time. Mr. Ho testified that he and Raymond have not discussed the topic again, and Mr. Ho has not yet done anything for Raymond.

- [175] Raymond testified that after the South Granville House was purchased, Mr. Ho told him that it was for Ronald. Raymond testified that Mr. Ho said that he was quite old, and will be able to see Raymond become an adult, but might not be able to see Ronald become an adult, so Mr. Ho was more worried about Ronald. Raymond testified that Mr. Ho said that he would be able to look after Raymond and see him graduate.
- [176] From about 2001 to 2006, while Ronald was small, Ms. Chen did not accompany Mr. Ho on his trips to Hong Kong, and instead stayed in Vancouver and cared for the children. Mr. Ho usually went to Hong Kong twice a year, for over a month at a time.
- [177] Ms. Chen testified that she looked after the South Granville House and the children, and Mr. Ho sometimes spent time looking into financial matters, such as share prices and real estate.
- [178] Ms. Chen testified that in late 2002 or early 2003, Mr. Ho told her that she and he had a joint account at UBS ("UBS Alleged Joint Account") which had been opened in around 2000, and she met the UBS bank manager in Hong Kong on an occasion when Mr. Ho spoke to him about investments. Ms. Chen testified that
- Mr. Ho told her that the UBS Alleged Joint Account was opened using the signature she provided for the HSBC Joint Account, and the UBS Alleged Joint Account was for security for Ms. Chen and Raymond.
- [179] Mr. Ho testified that he did not at any time hold a joint account with Ms. Chen at the UBS bank.
- [180] Mr. Ho testified that by 2002 or 2003, he had increased his monthly payments to Ms. Chen to \$2,500 CAD. He testified that immediately prior to that, he had been paying her the monthly sum of \$2,000, and prior to that, \$1,500. In contrast,
- Ms. Chen testified that Mr. Ho began paying her \$2,500 in about 2004.
- [181] By around April 2003, the Blundell Townhouse was sold for \$369,000. The proceeds were used to pay off the mortgage on the South Granville House. Ms. Chen testified that Mr. Ho said that, considering the Blundell Townhouse sale proceeds plus \$200,000 from the HSBC Joint Account, each of them had put about half into the South Granville House purchase price of about \$1.143 million.
- [182] In 2003 or 2004, a management company was managing the Two Broadway Properties, and Mr. Sze was disbursing agent.
- [183] The amount on deposit in the HSBC Joint Account as at July 4, 2003 was about 11,700,000 HKD.
- [184] Ms. Chen's Coast Capital Account documentation shows a deposit of almost \$150,000 from Mr. Ho in November 2003, and a debit of \$150,000 in December 2003. Both parties testified that Mr. Ho would put funds into that account and remove funds from it periodically.

[185] Mr. Ho testified that he took over management of H & Y around May 2004, and that prior to that, it was managed by Capital Management. Mr. Ho testified that his management duties were dealing with tenants and maintaining the premises. He testified that he hired real estate agents to find tenants, maintenance workers to do maintenance work, and lawyers to do tenancy agreements, and that he not

Ms. Chen dealt directly with them. Mr. Ho testified that he also looked after making GST payments, and that he signed the H & Y cheques, with two exceptions.

[186] There were two H & Y cheques for \$130 each dated January 13, 2006 and payable to the City of Vancouver which Ms. Chen signed. Mr. Ho testified that Raymond told him about the bills when Mr. Ho was in Hong Kong, and Mr. Ho had instructed Raymond to assist Ms. Chen to pay the bills. Mr. Ho testified that he expected Ms. Chen to sign cheques drawn on her personal account, rather than on H & Y's account, although she was a signatory to the H & Y bank account. Mr. Ho testified that he gave her signing authority on the H & Y bank account so that if necessary she could obtain funds if for some reason he was unable to give her the monthly \$2,500, but he could not recall that having occurred.

[187] One of the tenants of the Two Broadway Properties paid rent through direct deposit, and the other two tenants provided postdated cheques. Mr. Ho testified that he and Ms. Chen went together to the bank to deposit the cheques, usually when they were shopping, and he would usually provide her with the monthly \$2,500 at the same time. Mr. Ho testified that sometimes he spoke to the teller and Ms. Chen physically handed the cheque to the teller. He testified that on one or two occasions when he was in Hong Kong, Ms. Chen might have deposited the monthly cheques.

[188] Ms. Chen testified that she did a few things for H & Y. She testified that she went to a lunch with a tenant. She testified that she picked up cheques from a tenant a few times when the cheques first provided by the tenant were dishonoured for insufficient funds. She testified that she also deposited the rent cheques when

Mr. Ho was away, about three times a year. She became the agent for remitting the quarterly payments and preparing the NR4 Document. She testified that she provided advice to Mr. Ho based on her experience in China with the national food store.

[189] On July 20, 2004, Mr. Ho signed a declaration on a form from the British Columbia Ministry of Health Services, Medical Services Plan ("MSP") entitled "Application for Addition of Family Members." Mr. Ho's statement in this form are inconsistent with his statements in Canadian income tax forms that he was not a resident of Canada.

[190] The MSP form states that Mr. Ho most recently moved to B.C. on May 24, 2004, and that it is a permanent move. It states that Mr. Ho has been outside of B.C. for more than 30 days in the prior 12 months, but does not plan to be away from B.C. for more than 30 days in the following 6 months.

- [191] The MSP form describes Mr. Ho as "spouse", and states that a spouse "means a resident who is either married to or living and cohabiting in a marriage-like relationship with the applicant [Ms. Chen]..." The form describes "resident" as a person "who is a citizen of Canada or is lawfully admitted to Canada for permanent residence, who makes his or her home in British Columbia, and is physically present in B.C. at least 6 months in a calendar year ..."
- [192] Mr. Ho declared that the statements in the MSP form were true and that all persons listed (being Mr. Ho and Ms. Chen) were residents of B.C.
- [193] MSP provided coverage to Mr. Ho for the period October 1, 2004 to June 30, 2009.
- [194] In documentation dated January 3, 2005 regarding the HSBC Joint Account, the amount on deposit is about 10,500,000 HKD, and the parties' address is the South Granville House.
- [195] Ms. Chen executed a document in Chinese dated March 8, 2005. It provides that she authorizes her aunt to manage property in Li Shui City, China on her behalf. Mr. Ho testified that he assisted Ms. Chen to prepare this document, and she told him that it was going to be used to transfer this property to her aunt. Mr. Ho testified Ms. Chen told him that the price was 200,000 RMB, but that it was worth 700,000 RMB. Mr. Ho challenged the evidence that Ms. Chen would sell it for so little in light of its market value.
- [196] Around March 11, 2005, Mr. Ho withdrew about 1.2 million USD from the HSBC Joint Account and deposited it to the USB Ho Account.
- [197] Mr. Ho's 2005 NR4 form shows the disbursing agent or payor as H & Y. This meant H & Y had an account with the Canada Revenue Agency, referred to as a "NR4 account", for making remittances of monthly withholding amounts. However, the Canadian income tax authorities were not willing to allow H & Y to continue that role.
- [198] Ricky married his wife in around 2005.
- [199] Ms. Chen testified that on becoming a Canadian citizen, she was no longer considered by China to be a citizen, and was no longer eligible to receive a Chinese pension. She testified that her Chinese identification card expired in 2005, and it was then apparent that she was not a Chinese citizen. Ms. Chen testified that in 2005, she received close to 30,000 RMB from the national food store, in payment of severance and in respect of pension contributions.
- [200] Mr. Ho testified that at some time when the parties were in Canada, Ms. Chen told him that she received 20,000 RMB from the Chinese national food store.
- [201] For the period 2005 to 2008, H & Y's records show Ms. Chen receiving \$30,000 CAD per year for administration fees. The funds were not paid to her directly.
- [202] Generally, Mr. Ho arranged to transfer funds from the H & Y bank account to Ms. Chen's Coast Capital Account for use for living expenses in Canada.

[203] Mr. Ho testified that he thought the parties spent about equal time caring for Ronald. He testified that he dealt with schooling matters for Ronald and helped him with his English homework. He testified that Ms. Chen helped Ronald with homework from Ronald's weekly Chinese school. Mr. Ho testified that the family mostly ate in restaurants. Mr. Ho testified that he did most of the cleaning in the periods when the parties did not have a housekeeper. Mr. Ho testified that about half the time the parties were together, they had a housekeeper.

[204] Raymond testified that most of the time they had a housekeeper, who did the laundry and cleaning. Raymond testified that when the parties did not have a housekeeper, Mr. Ho cleaned the floors, cooked and ironed, and Ms. Chen did the laundry. Raymond testified that Mr. Ho dealt with Ronald's schooling, and both parties played with Ronald and cleaned the house.

m) South Granville House Declaration and First Ho Will

[205] Mr. Ho signed two documents both dated June 1, 2006. One is a "Declaration of Trust" ("South Granville House Declaration"). It provides that Mr. Ho holds his undivided half interest as joint tenant in the South Granville House in trust for Ronald.

[206] Mr. Ho executed a will dated June 1, 2006 ("First Ho Will"). It nominates

Ms. Chen as his executrix, and failing her, Ricky, and failing him, Mr. Ho's brother Che Man Ho. The First Ho Will provides that, so long as Ronald has reached the age of majority, he would receive Mr. Ho's interest in the South Granville House. The First Ho Will refers to the South Granville House, saying "in which an undivided $\frac{1}{2}$ interest is held by me, though as joint tenant, in trust for my son, [Ronald], as mentioned in the Declaration of Trust signed by me." It also provides that Ronald would receive Mr. Ho's interest in H & Y "holding the [Two Broadway Properties]".

[207] The First Ho Will provides that the residue of Mr. Ho's estate would be paid as follows: 40% to Ronald (at the rate of $\frac{1}{4}$ when he reaches the age of 19, $\frac{1}{2}$ when he reaches 25, and $\frac{1}{4}$ when he reaches "thirty (28) [sic]"); 20% to "my common-law partner", Ms. Chen (to be paid half on Mr. Ho's death and half five years after his death); 23.5% to Ricky; 5% to Jenny; 10% to "my ex-wife" Ms. Yip; and 1.5% "to my stepson, [Raymond]." The First Ho Will appoints Ricky as guardian of Ronald in the event that Ms. Chen does not survive Mr. Ho.

[208] In documentation dated June 3, 2006 regarding the HSBC Joint Account, the amount on deposit is about 1,130,000 HKD. The June 17, 2006 documentation shows a balance of only about 300,000 HKD.

n) Le Point Flat Agreement to Purchase

[209] The parties gave conflicting evidence about the reason for purchasing the Le Point Flat, and the reason that title was registered in their names jointly.

[210] Mr. Ho testified that around July or August 2006 he agreed to purchase the Le Point Flat for 6.5 million HKD, and made the down payment. At that time, the

Le Point Flat had not been built, but was to be constructed in Hong Kong, and the purchase was to be of a leasehold interest. Mr. Ho testified that his brother

Ho Che Man suggested that Mr. Ho purchase the property while it was still under construction, and Mr. Ho hoped to sell it in a few months for a profit.

[211] Mr. Ho testified that he and Ms. Chen went to the sales office on the last day of a planned trip to Hong Kong, and Ms. Chen was unhappy that it was so crowded. Mr. Ho testified that to make Ms. Chen happy, Mr. Ho decided to put the property in joint names and told her that she could have 10 to 20% of the profit made from the later sale of the Le Point Flat. The down payment was only 5%, being a little more than 300,000 HKD.

[212] In contrast, Ms. Chen testified that the reason for purchasing the Le Point Flat was so that she and Mr. Ho could stay there when they visited Hong Kong.

[213] Mr. Ho testified that because he was not intending to be in Hong Kong at the date for possession of the Le Point Flat, he signed a Power of Attorney ("POA") appointing his younger brother.

[214] Ms. Chen obtained a Canadian passport issued on December 1, 2006.

[215] Mr. Ho testified that in the period 1997 to 2006, he did not spend more than 3 months per year outside of Canada.

[216] Mr. Ho's 2006 NR4 form shows the disbursing agent or payor as "Frank Sze re: various H & Y Developments Ltd."

o) Marshall Company

[217] Around 2006 or 2007, Mr. Ho set up a company named "Marshall Company" and became sole shareholder. Mr. Ho testified that he did this for Ricky, but put the shares in his own name because Ricky had not been married long, and Mr. Ho wanted to be able to protect the asset against any claims by Ricky's wife in the event of marital breakdown.

[218] Marshall Company purchased two taxicabs in Hong Kong for about 3.2 or 3.5 million HKD each, by making a 2 million HKD down payment and obtaining a loan for the balance. The loan initially required monthly payments of about 30,000 HKD, and the taxis were rented out for 32,000 HKD per month, so Marshall Company received about 2,000 HKD per month before considering expenses like insurance and maintenance.

[219] Around 2007, the company managing the Two Broadway Properties was late in remitting funds for tax withholding and Mr. Sze was fined \$800. As a result,

Mr. Sze resigned as disbursing agent for the income from the Two Broadway Properties, and H & Y was substituted.

- [220] H & Y continued to remit withholding tax at the rate of 25% of net income from the Two Broadway Properties, but the income tax authorities levied a fine of about \$2,000 on the basis that H & Y was a bare trustee and all the beneficial owners were non-resident, and the required payment was 25% of gross income rather than of net income. As discussed below, Mr. Ho changed the agent to be Ms. Chen for the following two years.
- [221] Ms. May Chan repaid Ms. Chen the total of \$280,000, which consisted of the principal only, over about 9 months ending around June 2007. Ms. Chen testified that the money belonged to herself, her aunt, and her younger brother.
- [222] Ms. Chen deposited \$20,000 CAD into her Coast Capital Account on July 3, 2007 because Mr. Ho said that he did not have funds available to send from Hong Kong at the time. Her account received \$20,000 CAD in September 2007. Ms. Chen denied that it was Mr. Ho returning the \$20,000, but she did not have an explanation for the payment.

p) Tristar Property Purchase

- [223] Mr. Ho purchased property in 2007 in Hong Kong through "Tristar Properties Limited" ("Tristar") for about 20 million HKD. Mr. Ho said that it was purchased with the intention of selling it quickly at a profit, and that Tristar was created in a hurry, with Mr. Ho as the sole shareholder. Ms. Chen did not play a role in the acquisition of this property.
- [224] Ms. Chen became the disbursing agent for the Two Broadway Properties for the period October 2007 to September 2009. Because she was a Canadian resident, the withholding for income tax was based on the net income rather than the gross income. In connection with setting up the NR4 account with the income tax authorities, Ms. Chen signed a form agreeing to pay taxes, penalty, and interest if those items were not paid by the non-resident.
- [225] Ms. Chen testified that around November 2007, she obtained 70,000 USD from her younger brother's account, and was planning to use it to buy property in China, but when Mr. Ho suggested that would be a poor investment and she should purchase property in Hong Kong instead, she did not purchase property in China. Mr. Ho testified he discouraged Ms. Chen from buying property in China because he was concerned by the absence of a free market in China and the possibility of governmental intervention.

q) Tristar Property Sale

- [226] In January 2008, Tristar sold the Hong Kong property. Ms. Chen said that it sold for about 30 million HKD, yielding a profit of about 10 million HKD, which would have been roughly \$1.3 million CAD. In contrast, Mr. Ho said that the profit was about \$900,000 CAD.

[227] Mr. Ho said that he spent about \$300,000 of the profit on gifts to Ms. Chen and his brother and sister-in-law and on celebrations and trips, and that he deposited the balance of about \$600,000 CAD in the UBS Ho Account. Mr. Ho testified that Tristar reported this as a salary to Mr. Ho, rather than a capital gain, which would attract higher tax. Mr. Ho provided a copy of a 2007 - 2008 Hong Kong tax return for himself and Ms. Yip reporting the Tristar salary and that he paid the appropriate tax.

r) Telford Flat Purchase

[228] Ms. Chen entered into an agreement dated January 7, 2008 to purchase the Telford Flat for 3.1 million HKD. The evidence of the parties conflicted about when they agreed that Ms. Chen would borrow money from Mr. Ho to complete the purchase.

[229] Mr. Ho's brother, Ho Che Man, owned a unit in the Telford Gardens development, and told Mr. Ho that there was a unit for sale which he thought was a good purchase opportunity. Ho Che Man told Mr. Ho that the unit had been purchased for 4.1 million HKD and was available for purchase at 3.1 million HKD. Mr. Ho testified that he thought this was a good investment because of the price and location, and told Ms. Chen about this opportunity.

[230] Ms. Chen told Mr. Ho that she did not have the money to buy the Telford Flat, and was considering borrowing from her aunt. Mr. Ho thought the investment would make money, and he wanted Ms. Chen to own it herself. Mr. Ho deposed that he told Ms. Chen that she could try to borrow from the bank, and if that did not work, that he would lend the money to her.

[231] Ms. Chen paid the down payment, but her application for a mortgage was rejected on the basis that she was not a Hong Kong resident. Mr. Ho was prepared to be her guarantor, but because the purchase was scheduled to complete when the parties were planning to be away from Hong Kong, Mr. Ho signed a POA appointing his brother so that the brother could deal with borrowing the money. Mr. Ho wrote a cheque drawn on his HSBC Ho Account payable to his brother for about 2.85 million HKD for him to use if Ms. Chen was not able to obtain financing to complete the purchase.

[232] The evidence at trial was confusing about Ms. Chen's execution of POAs.

Ms. Chen agreed that she had signed some POAs, but not as many as Mr. Ho testified she had signed. The evidence included two POA documents which appeared to have the identical signature page, suggesting either that there had been an error in photocopying, or that a POA had been falsely created. It is not necessary to provide further details about the POAs here.

[233] The Telford Flat purchase was completed while the parties were not in Hong Kong.

[234] Ms. Chen testified that originally Mr. Ho said that he would make her a gift of 1 million HKD toward the Telford Flat purchase price, but later said she owed him

1 million HKD, and she accepted that it was a loan ("Telford Loan"). Ms. Chen testified that Mr. Ho said he would not make the Telford Loan if Ms. Chen's aunt was a registered owner of the Telford Flat, but he would if Ms. Chen owned it solely.

Ms. Chen testified that the parties did not discuss terms for repaying the Telford Loan, but she was not required to pay interest.

[235] Ms. Chen withdrew \$150,000 from her Coast Capital Account, which she testified was money belonging to her aunt and younger brother and recovered from Ms. May Chan, and used it to purchase the Telford Flat.

[236] Mr. Ho testified that because Ms. Chen was unable to arrange other financing to complete the purchase of the Telford Flat, he lent Ms. Chen 1 million HKD on the date for closing. He testified that she joked that she would pay him 5% interest, but has not paid him interest. Mr. Ho explained that, although he provided a cheque for about 2.85 million HKD, Ms. Chen wired about 1.85 million HKD to his HSBC Ho Account. At that time, the conversion rate was about 7.8 HKD for each \$1 CAD, so Mr. Ho's loan of about 1 million HKD was about \$128,000 CAD.

[237] The evidence included a copy of a Tenancy Agreement dated March 7, 2008 regarding the Telford Flat. It provides for a rental term of March 14, 2008 to March 13, 2010, at rent of 12,500 HKD per month, with a security deposit of 25,000 HKD. It provides for termination on one month's notice after the first year of the tenancy.

Mr. Ho's sister-in-law, Ms. Yip Sui Chu, has signed on behalf of the landlord.

[238] The evidence also included a POA dated March 26, 2008, purportedly from Ms. Chen appointing Ms. Yip Sui Chu, but Ms. Chen denies signing it. This POA refers to the purchase of the Le Point Flat for 6.076 million HKD by Mr. Ho and

Ms. "Chan", a spelling of Ms. Chen's name which she did not use but which may be used in Hong Kong.

[239] Mr. Ho testified that this POA was to enable the attorney to take possession of the Le Point Flat in Ms. Chen's absence. The copy of this POA which was available at trial appeared to have the same signature page as the POA dated January 18, 2008 which Ms. Chen admits signing.

[240] At some point in 2008, the Zhuhai Flat was renovated, and Mr. Ho paid over 100,000 HKD for the renovations.

s) Le Point Flat Purchase Completion

[241] In May or June 2008, the purchase of the Le Point Flat completed, almost two years after the date of the agreement to purchase it. The Le Point Flat was registered in the names of Mr. Ho and Ms. Chen jointly. Ms. Chen did not contribute any of the purchase funds.

- [242] Neither Mr. Ho nor Ms. Chen were in Hong Kong on completion of the Le Point Flat purchase and neither of them took physical possession of the property. Mr. Ho testified that he understood that a person taking possession of a property had to be either a purchaser or someone appointed by a purchaser under a POA.
- [243] Ms. Chen testified that around this time, Mr. Ho told her that if anything should happen to him in the future, Ms. Chen and Ronald would be able to stay in the Le Point Flat, or they could liquidate it and have some money.
- [244] Raymond reached the age of 19 years in June 2008. Ms. Chen testified that Mr. Ho said he wanted Raymond to sign a document relinquishing any claim to the South Granville House once he reached this age, and she wanted Mr. Ho to wait until Raymond graduated from university and Mr. Ho gave him a down payment to buy a property. Raymond has not signed any document relating to the South Granville House.
- [245] For about three months starting in June 2008, Mr. Ho and Ms. Chen were in Hong Kong and Zhuhai. The Le Point Flat was vacant, and they stayed there when they were in Hong Kong. It was painted at Mr. Ho's expense, and he purchased furniture for about 30,000 HKD which included three beds, a sofa, and a dining table. Mr. Ho suggested that the Le Point Flat would be more marketable for rental and sale as a fully furnished unit, and that until it was sold, he and his Second Family could stay there when in Hong Kong.
- [246] Mr. Ho testified that in the last week of August, during this trip to Hong Kong, Ms. Chen executed another POA to permit the transfer of the Le Point Flat if it were sold. The evidence did not include a copy of this POA.

t) Cars

- [247] In late September 2008, Mr. Ho paid the purchase monies for a 2008 BMW X5 4.8i car. It is in the name of Ms. Chen, as is a Mercedes. Ms. Chen testified that Mr. Ho gave her the Mercedes, and the BMW was in her name for convenience but was for family use. However, in an affidavit she deposed that she felt she rightfully owned the BMW as well.
- [248] Mr. Ho testified that there had been a series of cars he and Ms. Chen used, the earliest of which were in Ricky's name, and the later ones which were in

Ms. Chen's name. Mr. Ho testified that he liked to get a new car when the models changed. He testified that they were not registered in his name because he was a non-resident, and it was more convenient for things like purchasing insurance if a car was in Ms. Chen's name.

- [249] Mr. Ho testified that he did not intend to make a gift of these cars to

Ms. Chen. He testified that Ms. Chen did not pay anything toward the purchase price, insurance, or maintenance costs for these cars. He testified that he maintained them and drove them and considered them his "toys", just as he considered Ms. Chen's jewellery, mink coat, and clothes to be her "toys" and to be gifts from him to her.

- [250] Ms. Chen signed a loan agreement dated August 4, 2008 confirming the borrowing of 1.1 million RMB from her aunt for five years, bearing annual interest at 5%. On August 4, 2008, the cost of RMB was about 0.15 CAD, and each CAD cost about 6.627 RMB. At that rate, 1.1 million RMB would be about \$166,000 CAD.
- Ms. Chen explained that these were funds used in the purchase of the Telford Flat.
- [251] Mr. Ho and Ms. Chen signed an application to Coast Capital Savings for a business line of credit for H & Y dated October 24, 2008 for \$8,500. They also signed an agreement to personally indemnify Coast Capital Savings for any losses relating to such loan to H & Y.
- [252] Towards the end of 2008, Mr. Ho purchased a small car parking space in Hong Kong ("HK Parking Stall"). Ms. Chen did not assist Mr. Ho with that acquisition.
- [253] Mr. Ho testified that in 2008, he transferred funds from the UBS Ho Account to the HSBC Joint Account and to his HSBC Ho Account. He testified that he did so because there was a worldwide financial crisis, and he lost trust in UBS, and the Hong Kong government was guaranteeing the HSBC accounts. Mr. Ho also testified that in 2008, because interest rates were so low, he transferred some cash into shares and bonds, and he ended up losing money on them.
- [254] FSL filed income tax documents for 2008 for Mr. Ho and the members of his First Family. All of the income tax returns refer to an election under section 216, which is non-residency. All of the returns attach a statement of real estate rentals regarding the Two Broadway Properties, which provides that the gross rents were about \$247,000, the net income before adjustments was about \$137,000, and the individual's share was about \$34,000.
- [255] The largest claimed expense is property taxes of about \$57,000. The expenses claimed include about \$30,000 in management and administration fees, and \$8,725 for travel. Each individual tax return refers to non-resident tax withheld of \$8,010. In the documents with the 2008 return for Mr. Ho, the NR4 is addressed to Ms. Chen at the South Granville House, but Mr. Ho's address is described as the May Road Home.
- [256] Ms. Chen testified that by late 2008 and early 2009, she and Mr. Ho frequently quarrelled over Mr. Ho's request that Raymond sign a document giving up any claims he might have to the South Granville House.
- [257] On January 6, 2009, Mr. Ho withdrew 400,000 HKD from the HSBC Joint Account, and the following day, he withdrew a further sum of about 4.5 million HKD. It is not clear what he did with these funds.
- [258] The parties gave conflicting evidence about how much Mr. Ho gave Ms. Chen in annual red packet money for the Chinese new year celebration. Mr. Ho testified that he gave Ms. Chen \$5,000 CAD for a number of years, and then for the last 5 years they were together, he gave her \$10,000. In contrast, Ms. Chen testified that Mr. Ho gave her \$5,000 CAD for about the years 1999 through 2006, and starting in 2007, he gave her \$10,000 CAD.

- [259] Mr. Ho and Ms. Chen usually went on two vacations a year, and sometimes three. Mr. Ho testified that when he and Ms. Chen travelled, he gave her spending money. He testified that he paid all credit card bills.
- [260] Mr. Ho testified that around January 2009, he and Ms. Chen had a discussion about interest on the Telford Loan. Mr. Ho testified that he told her if she paid him the interest of 50,000 HKD, he would use it to buy something for her, and in the end she said she would just not pay any interest.
- [261] Ms. Chen testified that in February 2009, Mr. Ho told her that all his money in Hong Kong had been brought down by shares and investments, and that she should give him all the money she had. Ms. Chen testified that she borrowed about half of the repayment money from her younger brother.
- [262] The statement dated March 17, 2009 for the HSBC Joint Account is addressed to Mr. Ho alone at the Le Point Flat address. The amount on deposit is about 750,000 HKD.
- [263] Mr. Ho testified that by March 2009, the Singapore government was guaranteeing the UBS accounts, and he transferred funds back from HSBC to UBS.
- [264] Mr. Ho testified that around March 2009, Ms. Chen repaid him about 330,000 HKD, being about \$50,000 CAD, of the 1 million HKD he lent her for the purchase of the Telford Flat. He testified that she told him she could pay him more in May 2009. Mr. Ho testified that he told Ms. Chen at that time that he needed money, but he was actually concerned that she was not paying any interest on the Telford Loan, and he thought she should start paying the principal.
- u) March 2009 Argument, Son Removal Document, and South Granville Chen/Ho Transfer
- [265] Mr. Ho testified that on a Friday in late March 2009, he spoke on the telephone to his brother, and Ms. Chen apparently overheard him making comments about her. Mr. Ho testified that Ms. Chen argued with him angrily about what she had overheard, and said that the parties should separate. Mr. Ho testified that he asked her what she meant by separate, since there were things in her name, and he had the South Granville House particularly in his mind.
- [266] Mr. Ho testified that Ms. Chen responded that she would just take the boys with her, and would return everything to him, including the Zhuhai Flat and the cars. Mr. Ho testified that she had made the suggestion during many prior arguments that she would take the boys, and he had responded by asking her not to do that.
- [267] Mr. Ho testified that he asked her if she really wanted to do this, and she told him to look for a lawyer, and said that they would sign a document confirming the arrangement the next day. Mr. Ho testified that Ms. Chen made a comment to the effect that "whoever does not go to the lawyer's office to sign it tomorrow will die in a car crash." Mr. Ho understood this to be like an oath to the effect that both should sign the document.

- [268] Mr. Ho calculated that between Ms. Chen's arrival in Canada in late 1997 until April 2009, he had given Ms. Chen over \$350,000 through monthly payments and spending money on trips. He testified that in addition he gave her about \$70,000 in new year's gifts.
- [269] Mr. Ho testified that on the Monday following his argument with Ms. Chen, he asked her if she really meant to do what she said, and she repeated the oath, and said she really wanted to go through with it. Mr. Ho testified that he decided not to argue anymore and to put things back in his own name, but that he did not at that time have the intention to separate from Ms. Chen.
- [270] Mr. Ho then made an appointment at the office of a lawyer named Peter Li. He and Ms. Chen met at the office on March 30, 2009. Mr. Ho testified that Mr. Li translated certain documents which Ms. Chen signed. They included a form of transfer of the South Granville House from Mr. Ho and Ms. Chen to Mr. Ho alone dated March 30, 2009 ("South Granville Chen/Ho Transfer").
- [271] Both Mr. Ho and Ms. Chen signed a document dated March 30, 2009 which is in Chinese ("Son Removal Document") and was translated as follows:
- I, Mr. Ho, make this agreement that from now on Ms. Chen will take Ronald and Raymond to live independently and I agree I will not interfere with or disrupt their lives in the future.
- [272] Mr. Ho prepared and typed the Son Removal Document. The parties signed it before Mr. Li, who marked on the document that advice was neither requested nor given. At the time, Raymond was 19 years old, and Ronald was about 7 1/2 years old.
- [273] Mr. Ho testified that he signed the Son Removal Document to calm the quarrel with Ms. Chen, and he did not believe that she would take the boys away.
- [274] Ms. Chen testified that she signed the South Granville Chen/Ho Transfer in exchange for the two boys as set out in the Son Removal Document.
- [275] In addition to the South Granville Chen/Ho Transfer and the Son Removal Document, Ms. Chen signed a document giving irrevocable authority to transfer the fee simple of the South Granville House to Mr. Ho, a statutory declaration, and a letter recommending that she obtain independent legal advice and confirming that she chose not to do so.
- [276] Ms. Chen testified that around this time, Mr. Ho told her that he had cancelled a family trip to Toronto planned for April.
- [277] Capital Pacific Realty Advisors appraised the South Granville House (at Mr. Wong's request) as at March 30, 2009 for \$1.88 million CAD.
- [278] Ms. Chen testified that on March 31, 2009, Mr. Ho agreed to revoke the Son Removal Document and the South Granville Chen/Ho Transfer.

- [279] Ms. Chen testified that she asked Mr. Ho to arrange an appointment with the lawyers to cancel the previous documents. She testified that around April 1, 2009, Mr. Ho told her that he had telephoned the lawyer to suspend the document so the transfer would not occur, and he told her that the lawyers were busy and he would set up a meeting when the lawyers were available.
- [280] The parties agreed that around April 1, 2009, they went to a bank and inquired about a loan, and that Ms. Chen saw a computer screen indicating that both parties were still shown as owners of the South Granville House. They did not agree on why they went to the bank and made the loan inquiry.
- [281] Ms. Chen testified that they did not intend to take out a mortgage, and that seeing the banker about a possible mortgage was a pretext so that the banker would show them the status of title to the South Granville House.
- [282] Mr. Ho denied that he inquired about the loan for the purpose of showing Ms. Chen that the property remained in her name, saying that he thought it would take one to two weeks before the transfer would have shown up on the computer. However, Mr. Ho did not explain why he went to the trouble of looking into obtaining a loan at this time.

v) Reconciliation Efforts

- [283] Mr. Ho testified that he gave Ms. Chen the monthly sum of \$2,500 at the beginning of April 2009. Mr. Ho testified that this was the last time he gave her that monthly sum. He testified that he told her that what had been signed had been signed, and perhaps he would just buy her another, smaller house for \$400,000 to \$500,000. Mr. Ho testified that he meant a house that could be solely in her name, and that she could rent it out for part of her spending money. Mr. Ho testified that he suggested that he purchase such a house when he had more money in hand, perhaps in May or September, and suggested that they stop arguing about the South Granville House.
- [284] Mr. Ho testified that Ms. Chen responded that she still wanted her name to half of the South Granville House, and also wanted Mr. Ho to buy her another house. Mr. Ho testified that he told her she was too greedy, and he was not willing to transfer an interest in the South Granville House back to her.
- [285] Ms. Chen testified that Mr. Ho did not suggest that he would buy her another house while leaving the South Granville House in his name.
- [286] Ms. Chen testified that around April 4 or 5, 2009, Mr. Ho told her that it was too late to stop the transfer, and she felt that he had been lying to her. She testified that he told her that if the South Granville House was transferred back they would have to pay taxes, and that they had to wait six months to transfer the property back. She testified that she did not understand, and she told him she wanted the documents cancelled, and he said she did not trust him so they should separate.

[287] In 2009, the value of the Two Broadway Properties was around \$3.4 million.

[288] Around April 8 and 9, 2009, Mr. Ho and Ronald stayed in a Vancouver hotel for a night and then went to Toronto, returning April 14 or 15, 2009. This was the holiday which Ms. Chen thought Mr. Ho had cancelled.

[289] Mr. Ho testified that on April 17, 2009, Mr. Ho met with Ms. Chen's sister, who told him that Ms. Chen was going to sue him if he did not transfer a half interest in the South Granville House back to Ms. Chen, and so Mr. Ho decided to go to Hong Kong to let Ms. Chen calm down. Ms. Chen commenced this lawsuit on

April 17, 2009.

[290] Mr. Ho left Vancouver for Hong Kong on April 19, 2009 and returned on

June 19, 2009. Raymond and Ronald stayed with their mother at the South Granville House.

w) World Base Shares

[291] Mr. Ho testified that in April 2009 he transferred his shares in World Base to Ricky at Ms. Yip's request, although Ms. Yip held the document Mr. Ho had signed many years before transferring his shares to her.

[292] Mr. Ho testified that Ms. Yip could not sign the documents transferring the shares from Ms. Yip to Ricky "because of the honesty in her heart" and that she preferred that Mr. Ho do it, suggesting that the earlier transfer to her was not intended to be effective. Mr. Ho testified that he and Ms. Yip thought it was an appropriate time to transfer the shares to Ricky because he had been married for five years and his marriage could be considered stable.

x) Telford Flat Documents

[293] The evidence included an acknowledgement with a date which is unclear but is likely April 23, 2009 that Ho Che Man received 31 documents from Wong, Fung & Co, Solicitors, "for and on behalf of" Ms. Chen. The documents are title deeds and documents related to the Telford Flat. Ms. Chen did not ask or authorize Ho Che Min to obtain these documents, and he did not provide them to her.

y) Le Point Flat Sale

[294] The evidence includes a copy of an assignment dated April 24, 2009 between Mr. Ho and Ms. Chen as vendors and Mr. Ho as purchaser ("Le Point Chen/Ho Transfer"). It was executed by both Mr. Ho and his sister in law Ms. Yip Sui Chiu, and appears to have been interpreted to them by a clerk at the firm of Messrs.

Ho and Wong, Hong Kong solicitors. Mr. Ho testified that Ms. Yip Sui Chui executed the Le Point Chen/Ho Transfer pursuant to the POA allegedly executed by Ms. Chen in August 2008. Ms. Chen testified that she did not to her knowledge ever give

Ms. Yip Sui Chu a POA to deal with Ms. Chen's interest in the Le Point Flat, although Ms. Chen agreed she had given Ms. Yip Sui Chu a POA in January 2008 to deal with the Telford Flat management company.

[295] The Le Point Chen/Ho Transfer refers to Ms. Chen receiving 3 million HKD. Ms. Chen did not receive any money in respect of this transfer. Ms. Chen did not learn of the transfer of her interest in the Le Point Flat until she saw it at her lawyer's office in 2010.

[296] Mr. Ho sold the Le Point Flat in May 2009 for 6.8 million HKD, being about \$880,000 CAD, with the transaction completing in July 2009. The net sale proceeds were deposited into the UBS Ho Account. Mr. Ho said he decided to sell for two reasons: the market had been falling and he could sell it on about a break-even basis at that time, and Ms. Chen had said that she wanted to separate from Mr. Ho. Mr. Ho said that although the purchase price had been 6.5 million HKD, it was sold at about a break-even basis after taking into account expenses. Mr. Ho testified that he sold the Le Point Flat together with the furniture, and he removed Ms. Chen's shoes, clothes and valuables, and left them for her at the Zhuhai Flat.

[297] Mr. Ho testified that in May 2009 he transferred about 193,000 USD from the HSBC Joint Account to the HSBC Ho Account. During this trip to Hong Kong, Mr. Ho also restructured the portfolio of the UBS Ho Account.

[298] When Mr. Ho was in Hong Kong, he tried to get access to the parties' joint safe deposit box. Ms. Chen had the key but refused to provide it to him. The bank would not give Mr. Ho a replacement key and would not open it unless both joint holders were present. The contents of the box include a necklace, gold coins, gold bars, and about 100,000 HKD in cash.

[299] In May 2009, Raymond received a letter from Ms. Chen's lawyer asking him to give some legal documents to Mr. Ho to the effect that Mr. Ho could not sell the South Granville House. Raymond did not want the family to be split up and he had an angry conversation with Ms. Chen which led to police involvement. The evidence conflicted about what occurred, but it is not necessary to resolve that conflict in order to determine the issues at trial.

[300] Raymond has not talked to Ms. Chen since around May 2009, although they have been in each other's presence frequently.

[301] Mr. Ho's standing instructions to UBS were to transfer 180,000 HKD quarterly from the UBS Ho Account to the HSBC Ho Account. This was to cover the 50,000 HKD per month that he paid to Ms. Yip, and other Hong Kong expenses. Mr. Ho sometimes transferred more money if he wanted to give money to Ricky or Jenny for items like renovations.

[302] Mr. Ho reported to Canadian income tax that he was non-resident for the first half of 2009 and a Canadian resident for the balance of the year. Mr. Ho testified that in the period from late 1997 to 2009, he spent more than half of each year in Canada, although he considered himself to be non-resident and did not pay Canadian income taxes except on the one-quarter net income from the Two Broadway Properties registered in the name of H & Y.

[303] By June 2, 2009, there were no funds in the HSBC Joint Account. Mr. Ho closed the HSBC Joint Account when he knew that Ms. Chen was suing him.

z) Separate Under Same Roof

[304] Mr. Ho returned to Vancouver from Hong Kong on June 19, 2009. He returned to the South Granville House.

[305] Mr. Ho testified that once Ms. Chen sued him, he no longer wanted to reconcile with her.

[306] Ms. Chen testified that she rented an apartment in July 2009 on Moffat Road in Richmond, B.C., although she did not move there until late December 2009. She testified that she continued to stay at the South Granville House because she wanted to see her sons.

aa) Second Ho Will

[307] Mr. Ho signed a will dated July 6, 2009 ("Second Ho Will"). The Second Ho Will appoints Ricky as executor, and failing him, Jenny. Like the First Ho Will, the Second Ho Will provides that so long as he has reached the age of majority, Ronald would receive Mr. Ho's interest in the South Granville House and in H & Y. It provides that Ronald will receive 45% of the residue, at the rate of 5% at the age of 19, 10% at the age of 25, 10% at the age of 28, and 20% at the age of 33. It provides that the balance of the residue will go to Ricky as to 25%, Jenny 10%,

Ms. Yip 10%, and Raymond 10%. Like the First Ho Will, it appoints Ricky to be the guardian of Ronald during his minority. Like the First Ho Will, one of the witnesses was a lawyer, Peter Li.

[308] Mr. Ho testified that by the time he and Ms. Chen separated, he had bought her about \$300,000 to \$400,000 CAD in jewelry. He provided a list setting out his memory of the purchase price for jewellery, handbags, and fur coats he gave

Ms. Chen.

[309] Raymond became the disbursing agent for the Two Broadway Properties for the period commencing September 2009.

[310] Mr. Ho testified that the income from the Hong Kong accounts, both the UBS Ho Account and the HSBC Ho Account, belong to Ms. Yip. However, Mr. Ho also testified that he understood that his interest in the UBS Ho Account would have formed part of his estate after he passed away.

[311] By order of Williams J. pronounced December 23, 2009, Mr. Ho obtained exclusive occupancy of the South Granville House. Ms. Chen moved out late on December 23, 2009.

[312] Ms. Chen's income tax return for 2009 reported total income of \$1,254.

[313] Mr. Ho filed tax documents for 2009 on the basis that he resumed residency in Canada for the purposes of income tax on June 19, 2009.

[314] Mr. Sze's firm filed Canadian income tax returns for non-residents for Ms. Yip, Ricky, and Jenny for the years 2009, 2010, and 2011, reporting one-quarter of the net rental income from the Two Broadway Properties. Starting in 2009, the records show Raymond receiving the management fee of \$30,000 per year, rather than

Ms. Chen. Raymond testified that he types out tax documents for H & Y on a quarterly basis, but otherwise does not do any work for H & Y. Starting in 2009, a portion of the costs of defence counsel in this case were shown as H & Y's expenses.

[315] Mr. Ho and Ms. Yip filed a joint Hong Kong income tax return for 2009-2010. Mr. Ho testified that he was required to report his income jointly with Ms. Yip because they are still married.

[316] Mr. Ho started paying Ms. Chen \$2,000 per month commencing in January, 2010.

[317] Mr. Ho's financial statement dated April 2010 provides that his annual expenses were about \$107,000. Mr. Ho testified that this was the most accurate estimate of his expenses in the three financial statements he prepared.

bb) Marshall Company Taxi Sales

[318] Around April 2010, Marshall Company sold the two taxicabs for about

3.2 million HKD net of financing. By this time, the monthly loan payments had reduced to about 22,000 HKD per month, and the rent remained at 32,000 HKD per month. Marshall had about 3.5 million HKD, and that was transferred to Ricky.

[319] On April 23, 2010, a UBS account was opened in the name of Mr. Ho and Ricky jointly.

[320] Around May 2010, Ms. Chen discovered that the Le Point Flat had been sold.

cc) Hong Kong Telford Lawsuit

[321] Mr. Ho commenced legal proceedings in the Hong Kong High Court around May 12, 2010. In the lawsuit, Mr. Ho seeks a declaration that Ms. Chen holds the Telford Flat on a resulting or constructive trust for Mr. Ho's sole benefit. This is contrary to the position Mr. Ho took at trial, which was that Ms. Chen owned the Telford Flat but owed him the balance of 650,000 HKD for the Telford Loan.

- [322] Mr. Ho testified at trial that he has possession of the original property deeds for the Telford Flat, and that they or copies are required to sell or transfer the property.
- [323] Ms. Chen completed a court form Financial Statement on May 18, 2010. It states that she is unemployed, and her only income is interest and investment income of about \$1,250. She lists annual expenses of about \$64,000. The assets she listed include the Telford Flat with an estimated value of about \$400,000, the Zhuhai Flat with an estimated value of about \$100,000, two vehicles (a Mercedes Benz and a BMW) valued at \$45,000, and jewellery valued at \$200,000. She lists debts of about \$466,000, consisting of a debt of \$86,478.80 to Mr. Ho, and the balance as debts to other family members. One debt is described as "personal loan from Aunt Li Xing Zhou for Kowloon property" for \$230,000.
- [324] In or about October 2010, Mr. Ho commenced a relationship with a woman whose English name is Angel. She sometimes stays with Mr. Ho, but they do not live together all the time. Angel lived in Winnipeg from about July 2011 to July 2012, and Mr. Ho asked her to come back to help him with Ronald during his summer break from school. Angel is in her thirties and has a child. She works at a restaurant.
- Mr. Ho gives Angel a few thousand dollars every two or three months to help her.
- [325] Mr. Ho filed a personal income tax return as a Canadian resident for 2010 and 2011. Both included a foreign income verification statement which he certified disclosed his income from foreign property fully and completely. They disclosed income from the HK Parking Stall, but neither the income nor the principal of the UBS Ho Account.
- [326] The Zhuhai Flat was appraised as at April 10, 2011 for about 1 million RMB.
- [327] In June or July 2011, Mr. Ho paid for a new Mercedes car for Ms. Yip, which she received in Hong Kong. She estimated that it cost about 700,000 HKD.
- [328] Ricky and his wife moved out of the May Road Property and into their own apartment around November 2011.
- [329] Around the end of 2011, Mr. Ho increased the monthly amount he paid to Ms. Yip by 5% to 52,500 HKD.
- [330] Mr. Ho's 2011 income tax return reports line 150 total income of about \$27,500. This consists of about \$23,000 in respect of his one-quarter share of rental income from H & Y, and about \$4,500 in other income, relating to income from the HK Parking Stall. The enclosed Foreign Income Verification Statement refers to less than \$100,000 in real property outside Canada. It does not refer to any funds held outside Canada, or shares of non-resident corporations.
- [331] Capital Pacific Realty Advisors appraised the South Granville House (at Mr. Wong's request) as at February 22, 2012 for \$2.95 million CAD.

dd) UBS Ho Account Earnings

- [332] The evidence included calculations of the interest earned on the UBS Ho Account for the 32 month period from June 30, 2009 to February 2012 as about \$6,800, being about \$200 per month. Over that same period, the UBS Ho Account generated about \$174,000 in dividend and coupon income.
- [333] Considering all sources of income to the UBS Ho Account, it generated about \$100,000 per year in 2010 and 2011.
- [334] Mr. Ho testified that he prefers to hold cash, and is averse to risk, in part because he lost money on bonds in 2008, and because he lost 30% of his principal with Lloyd's bank. He also testified that he likes the funds to be readily accessible in case there is a great investment opportunity, and he generally avoids investments for terms exceeding three months. Mr. Ho also testified that he keeps most of the funds in HKD because it is needed in Hong Kong by his First Family, and that he can use the Canadian dollar proceeds from the Two Broadway Properties for Canadian expenses.

ee) Appraisals: Two Broadway Properties and Telford Flat

- [335] Capital Pacific Realty Advisors appraised the Two Broadway Properties (at both counsel's request) as at March 7, 2012 for \$5.150 million CAD.
- [336] Ms. Chen and Mr. Ho signed an Authorization to Release Information and Records dated June 4 and 5, 2012. It is directed to UBS in Hong Kong, and authorizes the release to their respective lawyers of any and all documents and information relating to any joint accounts they have or had any time with UBS.
- [337] UBS wrote a letter dated June 8, 2012 to Mr. Mah stating that Ms. Chen has never had any account with UBS, and that Mr. Ho has never opened a joint account with her. It appeared that counsel agreed that this letter was admissible for the truth of the contents.
- [338] In June 2012, the Two Broadway Properties were leased to three retail tenants. Mr. Ho routinely paid the Canadian income tax due by each of himself and the members of his First Family. Mr. Ho testified that he spent the income in Canada, and "paid back" the others in Hong Kong. He testified that Ms. Yip, Jenny and Ricky did not complain about that arrangement or ask that it be changed, and it has been going on for over ten years.
- [339] Jones Lang LaSalle prepared a valuation of the Telford Flat as at July 9, 2012 at the parties' joint request. The valuation is for 4.43 million HKD, being about \$585,000 CAD, assuming sale subject to the existing tenancy. The tenancy is described as a monthly rental for 12,500 HKD per month. The unit is described as being about 670 square feet in a building about 30 years old.

ff) Present Status

- [340] Raymond, Ronald, and Mr. Ho live in the South Granville House. Ronald is about 10 years old and is attending elementary school.
- [341] Mr. Ho pays Ms. Yip 52,500 HKD per month. He testified that he provides funds to Ricky and Jenny on request for items like home purchase down payments, weddings, renovations, cars, and new year's funds. He testified that he gave Jenny and Ricky the funds for the down payment to purchase real estate.
- [342] Raymond has been living with Mr. Ho since September 1997, when the parties came to Canada. Raymond is 23 years old. He is studying interactive arts and technology at university fulltime, and expects to graduate in April 2013. He plans to look for work when he graduates. Mr. Ho bought Raymond a 2007 Mazda 3 vehicle which is registered in Raymond's name. Mr. Ho pays Raymond's tuition costs of about \$8,000 per year, pays for books and supplies and gasoline, and pays about \$600 per month for other expenses. Raymond has previously worked at part-time jobs at a fast food restaurant and entering data.
- [343] Mr. Ho testified that he considers that he is holding the UBS Ho Account, the HSBC Ho Account, and life insurance for the benefit of Ms. Yip, Ricky and Jenny, although he also testified that if there is "anything left over" from the income, Mr. Ho can spend it himself. Mr. Ho testified that he felt a responsibility to his First Family because he was poor when Ms. Yip married him, and she and Ricky and Jenny went through "thick and thin" with him.
- [344] Mr. Ho testified that he used money from the UBS Ho Account and the HSBC Ho Account to make purchases when there was a balance remaining from the income in the accounts after meeting the needs of his First Family. Mr. Ho testified that he used such funds to purchase the South Granville House, the Blundell Townhouse, and the Zhuhai Flat. He testified that he did not sign any documents regarding a trust arrangement because it was a matter of family, trust, and conscience.
- [345] There is a safe deposit box in Hong Kong in the names of the parties jointly. There are several items of jewelry, about 100,000 HKD in cash, and some documents in it. Mr. Ho owns everything in it except the jewelry items.
- [346] The Zhuhai Flat remains in Ms. Chen's name, and the parties agreed that Ms. Chen is the beneficial owner. Mr. Ho paid the Zhuhai Flat expenses for a time, but after an account he held in China was exhausted, he stopped making any payments.
- [347] Mr. Ho estimates the value of the Zhuhai Flat at about 1.35 million RMB, being over \$200,000 CAD. The Zhuhai Flat is vacant, and Ms. Chen pays the expenses of about 300 RMB per month for management, water, and garbage disposal.

- [348] Ms. Chen remains owner of the Telford Flat, and receives rent of about 12,500 HKD monthly, which is less than \$2,000 CAD monthly. Ms. Ho reported this rental income in her financial statement as about \$7,650 per year net of repayment to her aunt, management fees, property tax, and income tax. Ms. Chen testified that she planned to sell the Telford Flat when this litigation was over.
- [349] Ms. Chen lives in a one-bedroom rental apartment in Richmond, B.C. She shares a bed with Ronald when he stays overnight on Friday and Saturday nights. Ms. Chen attends English language classes for about 17 hours per week. She has been taking classes since separation, but has not looked for work. Ms. Chen looks after Ronald on the weekends from Fridays at 3 p.m. to Sundays at 3 p.m., and on Wednesdays from after school, or if he is not in school, from 1 p.m. until about 5 p.m. Ms. Chen and Ronald speak to each other mostly in Cantonese, although sometimes Ms. Chen speaks to Ronald in Mandarin.
- [350] Ms. Chen testified that she did not think her English was good enough for her to obtain employment, but that she would like to stay in Canada and to find work as a receptionist in an office. She testified that she thought it would take her about five or six years to reach that level, considering both English classes and obtaining a certificate in office administration. Ms. Chen no longer has Chinese citizenship.
- [351] Ms. Chen has been borrowing from family to meet her living expenses. She says that she has been borrowing money from her younger sister. She estimated the total value of her jewelry and related items at \$60,000 to \$70,000. She testified that she paid for about \$20,000 CAD of the jewellery, and the balance was gifts from Mr. Ho.
- [352] The May Road Property is registered in the name of World Base. Ms. Yip and Ricky each own half the shares of World Base. Mr. Ho estimates the value of World Base at around \$5 million CAD.
- [353] Ms. Yip testified that she did not mind that Mr. Ho had been living with another woman for 12 or 14 years, and did not mind that he had another child with another woman.
- [354] Mr. Ho did not pay Ms. Chen \$2,000 on October 1, 2012.
- [355] While reasons for judgment were pending, Ms. Chen applied for an order in respect of interim spousal support.
- [356] On January 8, 2013, I ordered that Mr. Ho continue to pay Ms. Chen \$2,000 per month, and that he must pay it for the period commencing October 1, 2012.

I ordered that the payment would be considered interim spousal support, but was without prejudice to Ms. Chen's argument that she was entitled to a greater amount for interim spousal support. I ordered that Mr. Ho must indemnify Ms. Chen for any taxes payable with respect to interim spousal support, including interest, penalties, and costs of filing modified tax returns, so that the payment was effectively \$2,000 per month net of those items. Ms. Chen was also awarded costs and disbursements of the application in the total amount of \$670.

FINDINGS OF FACT ON CONTESTED FACTS AND ANALYSIS

A. Assets

[357] I will consider the assets, including the unjust enrichment claims, in the following sequence:

- a) South Granville House;
 - b) Two Broadway Properties and H & Y;
 - c) Telford Flat;
 - d) proceeds of sale of the Le Point Flat;
 - e) Mercedes and BMW;
 - f) UBS Ho Account;
 - g) UBS Alleged Joint Account; and
 - h) HSBC Joint Account.
- a) South Granville House

[358] Ms. Chen's position is that she is entitled to a declaration that the South Granville Chen/Ho Transfer is null and void, and that she is the beneficial owner of a one-half interest.

[359] Ms. Chen argued that Mr. Ho gave her the Blundell Townhouse, that the proceeds of sale of the Blundell Townhouse together with funds from the HSBC Joint Account amounted to about half the purchase price of the South Granville House, and that Mr. Ho gave her a one-half interest in the South Granville House. She argued that the South Granville Chen/Ho Transfer should be set aside on the basis that the Son Removal Document was ineffective.

[360] Mr. Ho's position is that he is entitled to the entirety of the South Granville House. He argued that he provided all the purchase monies, through the original purchase of the Blundell Townhouse and the later purchase of the South Granville House, and also provided all the money to maintain those properties. He argued that the South Granville Chen/Ho Transfer was effective on the basis that it was simply confirming the arrangements which had been in place for years.

- [361] The South Granville House was purchased in April 2002 for about \$1.143 million CAD. It was appraised as at March 2009 for \$1.88 million CAD, and as at February 22, 2012 for \$2.95 million CAD.
- [362] The law provides in s. 23(2) of the Land Title Act that the registered ownership reflects the actual ownership. However, the presumption can be rebutted, including by evidence of a contrary intention of the donor. See *Chuang v. Wong*, 2012 BCSC 233.
- [363] There are legal presumptions which can assist in the absence of determinative evidence. The presumption of resulting trust presumes that a party who receives property without paying for it holds it on a resulting trust for the party who paid for it. In contrast, the presumption of advancement presumes that a transfer from a married person to his or her spouse was a gift. See *Pecore v. Pecore*, 2007 SCC 17.
- [364] In this case, the evidence enables a determination of whether assets were transferred as a gift, and it is not necessary to resort to presumptions.
- [365] I had concerns about the truthfulness of both Ms. Chen and Mr. Ho. Both of them participated in Ms. Chen going through a "fake" marriage in order to immigrate to Canada, although each claimed the other one played the bigger role. Ms. Chen also lied to Canadian immigration authorities in order to immigrate. Some of
- Ms. Chen's evidence appeared commercially unlikely, such as her evidence that a signature form she gave to HSBC would be used by UBS. Some of her evidence was apparently guesswork, and some was apparently based on a misunderstanding of commercial practices.
- [366] Many of the concerns about Mr. Ho's evidence related to how he handled assets and how he reported them for tax and legal purposes. He should have reported the UBS Ho Account on his foreign income declaration form with his annual Canadian tax returns, but he did not do so. Mr. Ho testified that he put Marshall Company shares in his own name "to protect" them from claims by Ricky's wife, suggesting that this was a deception. Mr. Ho made a claim in Hong Kong against the Telford Flat, although he admitted in this lawsuit that it belongs to Ms. Chen. Mr. Ho told Ms. Chen in early 2009 that he needed money, which was untrue and a pretext to make her pay down the Telford Loan. Mr. Ho completed the MSP form on the basis that he was a resident for periods that he claimed to be non-resident for tax purposes. In addition, Mr. Ho was not forthright with his First Family about his relationship with his Second Family.
- [367] There were aspects of Mr. Ho's evidence which did not make sense. For example, he testified that after Ms. Chen signed the South Granville Chen/Ho Transfer, he and Ms. Chen went to the bank and discussed a possible loan. He denied that this was for the purpose of demonstrating the state of title to Ms. Chen, but he did not offer any other explanation for going to the bank and discussing a loan at that time. I accept Ms. Chen's evidence that she and Mr. Ho went to the bank and she was shown the state of title to the South Granville House, and that neither

Mr. Ho nor Ms. Chen was in fact interested in a loan.

- [368] Mr. Ho was careful about who was the registered owner of property. For example, the May Road Home and the Three Broadway Properties were purchased in the name of companies prior to the purchase of the Blundell Townhouse. Subsequent to the purchase of the Blundell Townhouse, Mr. Ho purchased property in the name of the company Tristar.
- [369] Mr. Ho has made arrangements so that the beneficial owner is not the registered holder of legal title. As discussed below, H & Y is simply holder of legal title to the Two Broadway Properties, and Mr. Ho and the members of his First Family each own a one-quarter beneficial interest. As discussed below, the Unsigned H & Y Trust Agreement was executed before the Blundell Townhouse purchase.
- [370] At the time of the purchase of the Blundell Townhouse, Ms. Chen was in a vulnerable position because she could not speak English, did not have a job, and was new to the Vancouver area. Mr. Ho chose to buy the Blundell Townhouse. The purchase price was \$345,000, which is a modest price in comparison to many Vancouver area homes. The Blundell Townhouse was subject to a mortgage of about \$180,000, such that the net equity was about \$165,000 at the time of the purchase.
- [371] In light of Mr. Ho's considerable wealth at the time, it would not have been surprising for him to give the Blundell Townhouse to Ms. Chen. Mr. Ho could have chosen to have a company purchase the Blundell Townhouse if he had been concerned to avoid ownership of property in Canada. Instead, the property was registered in Ms. Chen's name alone.
- [372] Mr. Ho's actions show that he could be generous when he chose. Prior to the purchase of the Blundell Townhouse, Mr. Ho had provided Ms. Chen with 10,000 RMB per month, even though he thought her prior boyfriend provided only 2,000 RMB per month. Mr. Ho had also been generous with gifts of jewelry to Ms. Chen, and provided Ms. Yip with a generous amount monthly. Mr. Ho chose not to pursue the woman from the massage business for the outstanding loan of about \$320,000 HKD. After the Blundell Townhouse purchase, Mr. Ho made gifts of about \$300,000 CAD from the profit on the property in Tristar's name. Mr. Ho gave Ms. Yip a Mercedes worth about \$700,000 HKD in July 2011.
- [373] Ms. Chen's evidence that Mr. Ho told her he was giving her the Blundell Townhouse is more probable in the circumstances at the time. I conclude that
- Mr. Ho gave Ms. Chen the Blundell Townhouse. He increased the value of
- Ms. Chen's interest when he paid \$135,000 of the principal in July 1998 and \$42,000 in May 1999.
- [374] Ms. Chen executed the Blundell Trust Declaration and Blundell Chen/Ho Transfer about three years after the property was purchased. Ms. Chen's evidence was that she understood that the documents would have effect only upon her death. In contrast, Mr. Ho's evidence, which I have rejected, was that he and Ms. Chen had always intended that Ms. Chen was holding the property in trust for him, and the documentation simply confirmed that.

- [375] The timing of execution of the Blundell Trust Declaration and Blundell Chen/Ho Transfer is strange. There was nothing in the sequence of events that explained why such a document should have been executed at such a time.
- [376] There was no benefit to Ms. Chen in signing the Blundell Trust Declaration and Blundell Chen/Ho Transfer. The documentation suggests that Ms. Adena Lee acted for Ms. Chen in connection with these documents, but Ms. Lee did not testify at trial.
- [377] I accept Ms. Chen's evidence that she did not understand the Blundell Trust Declaration and the Blundell Chen/Ho Transfer. I accept that, based on Mr. Ho's explanations, she understood that these documents would not take effect until she passed away. As a result, I conclude that the Blundell Trust Declaration and Blundell Chen/Ho Transfer are of no effect in this case.
- [378] The South Granville House was originally registered in the name of Ms. Chen and Mr. Ho as joint tenants. Once again, title was within Mr. Ho's control, but he did not register it in the name of a corporation, or in his own name alone. Ultimately, the proceeds of sale of the Blundell Townhouse were used to increase the equity in the South Granville House.
- [379] The South Granville House was purchased shortly after Ronald's birth. Mr. Ho and Ms. Chen had made a home in Canada together by that time, and Ms. Chen remained reliant on Mr. Ho.
- [380] The purchase price for the South Granville House was about \$1.145 million. The proceeds of sale of the Blundell Townhouse were about \$370,000. A further \$200,000 came from the HSBC Joint Account, with the effect that about half of the purchase monies were from Ms. Chen.
- [381] I accept that Mr. Ho gave Ms. Chen an interest in the South Granville House, that it was in substitution for her interest in the Blundell Townhouse, and that it was a half interest.
- [382] In the First Ho Will, Mr. Ho referred to his undivided half-interest in the South Granville House. The significance of this is that Mr. Ho did not refer to beneficially owning the entirety of the South Granville House.
- [383] In the South Granville Declaration, Mr. Ho declared that he held his undivided half interest as joint tenant in the South Granville House in trust for Ronald. The legal effect of such a declaration is to sever the joint tenancy and convert the ownership to tenancy in common. See *Re Mee* (1971), 23 D.L.R. (3d) 491 (B.C.C.A.).
- [384] Once Mr. Ho severed the joint tenancy, he and Ms. Chen each held undivided half interests as tenants in common.
- [385] Ms. Chen purported to transfer her interest in the South Granville House to Mr. Ho in the South Granville Chen/Ho Transfer. This transfer was in connection with the agreement that Mr. Ho would retain assets while Ms. Chen would retain Raymond and Ronald.

[386] The B.C. courts must make decisions regarding custody of children in the best interests of the children. Raymond and Ronald in fact presently live with Mr. Ho. As a result, the Son Removal Document is of no legal effect. Ms. Chen executed the South Granville Chen/Ho Transfer in exchange for nothing, and as a result, it is not valid.

[387] The effect is that Ms. Chen is entitled to an undivided half interest in the South Granville House and a declaration that the South Granville Chen/Ho Transfer is null and void. It is not necessary to consider Ms. Chen's alternative argument that she is entitled to a share in the South Granville House on the basis of unjust enrichment.

[388] I expect that Mr. Ho will want to buy Ms. Chen's share in the South Granville House. If the parties are not able to agree on the terms of sale, they have liberty to apply.

b) Two Broadway Properties and H & Y

[389] Ms. Chen seeks a declaration that she is entitled to an interest in the Two Broadway Properties and H & Y on the basis of unjust enrichment and constructive trust, and an order that Mr. Ho convey that to her or pay monetary compensation.

[390] The first question is the size of Mr. Ho's interest in the Two Broadway Properties. It was Mr. Ho's position that he owns a one-quarter share, while

Ms. Chen's position was that the Two Broadway Properties belong entirely to

Mr. Ho.

[391] H & Y is registered owner of the Two Broadway Properties. The evidence did not include a signed copy of the Unsigned H & Y Trust Agreement. However, for a period of many years commencing at least by 1989, the Canadian income tax returns have been filed in a way consistent with the existence of a trust on the basis set out in the Unsigned H & Y Trust Agreement. That period began before Mr. Ho met Ms. Chen, and has simply continued. Mr. Sze's August 2, 1994 facsimile to

Mr. Tsui is consistent with H & Y being a bare trustee of the Three Broadway Properties, and was sent before Mr. Ho and Ms. Chen commenced their relationship.

[392] I accept Mr. Ho's evidence that the parties described on the document executed the Unsigned H & Y Trust Agreement. I considered the fact that Jenny and Ricky were only 18 and 17 years old respectively at the time, and the fact that the Unsigned H & Y Trust Agreement confirms a benefit to Jenny and Ricky personally, rather than setting out any obligations for them.

[393] I have considered the fact that in 1985, when the Unsigned H & Y Trust Agreement was allegedly signed, Mr. Ho and the members of his First Family were resident in Canada, with the effect that this method of ownership would split the income, and that if, for example, Mr. Ho had significant income and Jenny and Ricky did not have other income, it would have reduced the total taxes payable. I have also considered that ownership with H & Y as

bare trustee would not have any income-splitting effect when Mr. Ho and the members of his First Family were not Canadian residents, because all the income would be taxed at the rate of 25%.

[394] I have also considered the fact that Mr. Ho has used the income from H & Y when he has been in Canada, rather than sending a one-quarter share to each of the members of his First Family. The members of Mr. Ho's First Family are apparently content to let Mr. Ho manage the income, on the basis that he is generous to them in Hong Kong.

[395] As a result, I conclude that Mr. Ho is the beneficial owner of a one-quarter undivided interest in the Two Broadway Properties.

[396] I accept the valuation of the Two Broadway Properties at \$5.15 million CAD. Mr. Ho's one-quarter share is therefore worth about \$1.285 million CAD, before considering the effect of tax on the capital gain.

[397] Ms. Chen argued that she should receive a share of H & Y and the Two Broadway Properties on the basis of unjust enrichment.

[398] The Supreme Court of Canada decision in *Kerr v. Baranow*, 2011 SCC 10, sets out the test for unjust enrichment. The court must consider the following:

- a) Did Ms. Chen confer a benefit or enrichment on Mr. Ho?
- b) Did Ms. Chen suffer a corresponding detriment?
- c) Is there an absence of a juristic reason for the enrichment?

[399] In some circumstances, the contribution of a party is too small to be considered an enrichment. See *Rubin v. Gendemann*, 2011 ABQB 71, aff'd 2012 ABCA 38; and *Valerio v. Silveira*, 2011 BCSC 1055.

[400] The steps that Ms. Chen took on behalf of H & Y were too minor to be considered an unjust enrichment. I accept that Ms. Chen signed two cheques on behalf of H & Y and perhaps more, that she attended a lunch with a tenant whose language she understood, that she picked up cheques periodically when a tenant's cheque was dishonoured by the bank, that she was the registered agent for two years for purposes of handling the quarterly income tax instalment payments, and that she agreed to indemnify Coast Capital Savings if H & Y failed to repay \$8,500 CAD. All of those were minor activities. They were not an unjust enrichment to either H & Y or the beneficial owners of the Two Broadway Properties, and they were not a material detriment to Ms. Chen.

[401] H & Y or the beneficial owners of the Two Broadway Properties notionally paid Ms. Chen \$30,000 CAD per year. She did not receive that payment in cash. Instead, Mr. Ho handled the funds, including paying taxes and Canada Pension Plan premiums for Ms. Chen on the basis that she was paid this sum. Ms. Chen received the benefit that she has Canada Pension Plan credits which may lead to pension benefits in the future.

[402] Even if Ms. Chen's activities regarding H & Y and the Two Broadway Properties could be considered an unjust enrichment, the benefits she received in her overall relationship with Mr. Ho, including the interest in the South Granville House, jewellery and monthly spending money, far outweigh any detriment

Ms. Chen suffered.

[403] Ms. Chen's claim to an interest in H & Y and the Two Broadway Properties is dismissed.

c) Telford Flat and Telford Loan

[404] The parties agreed at trial that Ms. Chen is the beneficial owner of the Telford Flat. Mr. Ho's position is that Ms. Chen is indebted to him in the amount of 650,000 HKD in respect of the Telford Loan. Ms. Chen's position at trial was that the amount outstanding on the Telford Loan should be calculated, and deducted from the monetary award for property or spousal support awarded to Ms. Chen.

[405] Ms. Chen signed the purchase agreement for the Telford Flat in January 2008, and the Telford Flat is registered in her name alone. As at July 9, 2012, the value of the Telford Flat was estimated at 4.43 million HKD, being about \$585,000 CAD.

[406] Mr. Ho commenced proceedings in Hong Kong on May 12, 2010 in which he claims the Telford Flat on the basis of a resulting or constructive trust. There does not appear to be any basis for this claim. Commencing the Hong Kong lawsuit was one of several steps Mr. Ho took in the two months he was in Hong Kong after he learned that Ms. Chen had sued him in Canada.

[407] This court cannot make any declaration regarding title to the Telford Flat because it is outside B.C. See *Tezcan v. Tezcan* (1992), 62 B.C.L.R. (2d) 344 at para. 83 (C.A.) However, at trial, Mr. Ho had the title documents relating to the Telford Flat in his possession. Mr. Ho is ordered to provide all the title documents relating to the Telford Flat to Ms. Chen.

d) Proceeds of Sale of the Le Point Flat

[408] Ms. Chen's position is that she was the beneficial owner of a one-half interest in the Le Point Flat, and that Mr. Ho wrongfully sold that interest. She claims compensation for the sale of her interest. The Le Point Flat was sold in May 2009 for 6.8 million HKD, being about \$880,000 CAD.

[409] Mr. Ho's position was that the Le Point Flat belonged to him and he put Ms. Chen's name on title to make her happy and because he was going to give her a share of any ultimate profit, but no such profit occurred.

[410] The Le Point Flat was purchased as a "pre-sale", before the unit was fully constructed. The purchase agreement was signed in July or August 2006 for a purchase price of 6.5 million HKD, but the sale did not complete for almost two years. On completion in May or June 2008, it was registered in the names of Ms. Chen and Mr. Ho jointly.

- [411] Ms. Chen's position is that the Le Point Flat was purchased as a Hong Kong home for Mr. Ho and his Second Family, and that Mr. Ho gave her an interest as security. Mr. Ho's position is that the Le Point Flat was purchased as an investment, but that the market became poor, with the result that the purchase had to be completed, and that it was appropriate to furnish the Le Point Flat and use it when Mr. Ho and his Second Family were in Hong Kong.
- [412] There was plenty of time in the period between the summer of 2006 and completion in the summer of 2008 for Mr. Ho to create a company to become owner of the Le Point Flat, or to make arrangements regarding title other than putting it in the name of Mr. Ho and Ms. Chen jointly, if he did not intend to give Ms. Chen an interest in the Le Point Flat.
- [413] The manner of Mr. Ho's sale of the Le Point Flat is troubling. I was not persuaded that Ms. Chen had a complete memory of all the POAs that she signed, particularly when she testified that she simply signed what Mr. Ho asked. However, Mr. Ho arranged for the transfer of title to the Le Point Flat to himself alone on April 24, 2009, and then for a sale to another in May 2009 for 6.8 million HKD. Ms. Chen did not learn about the sale until May 2010.
- [414] If, as Mr. Ho testified, the Le Point Flat was simply an investment, and Mr. Ho had agreed to give Ms. Chen a portion of the net profit, Mr. Ho could have been open and advised Ms. Chen about the May 2009 sale and the terms. Instead, Mr. Ho acted secretly in connection with the sale. In addition, Mr. Ho's evidence about the amount of Ms. Chen's alleged share in a plan to resell the Le Point Flat was vague because Mr. Ho testified that he was giving her "10 or 20%" of the profit. His explanation that he decided to make her a joint owner to make her feel better but without giving her a beneficial interest is not credible, and I reject it.
- [415] Ms. Chen's evidence is more likely regarding the ownership of the Le Point Flat on the balance of probabilities. I accept that Mr. Ho gave Ms. Chen a half interest in the Le Point Flat, and that it was intended to be used as the Hong Kong home for Mr. Ho and his Second Family, and to provide security for Ms. Chen if anything happened to Mr. Ho.
- [416] Mr. Ho sold the Le Point Flat without paying Ms. Chen anything. He is ordered to pay Ms. Chen half of the net sale proceeds of the Le Point Flat in compensation. The parties have liberty to apply if they cannot agree on the precise amount.
- [417] It is not necessary to consider Ms. Chen's alternative claim to the Le Point Flat sale proceeds on the basis of unjust enrichment.
- e) Mercedes and BMW
- [418] Ms. Chen's position is that Mr. Ho gave her the BMW, but that he owns the Mercedes. Mr. Ho's position is that the both the BMW and the Mercedes were registered in Ms. Chen's name as a matter of convenience in dealing with insurance and the like, but that both were his cars.

- [419] Mr. Ho enjoyed cars, which he referred to as his "toys", and he arranged to buy new ones frequently.
- [420] Both cars were used for family purposes, with the choice of car driven depending primarily on the weather and the use for the car. There were a series of cars which were registered in Ricky's name when he was resident in Canada, but which Mr. Ho considered to be his cars.
- [421] The registered owner of a vehicle is in the position to arrange car insurance. In this case, the registered ownership is less significant in determining beneficial ownership than in the case of real property.
- [422] I conclude on the balance of probabilities that Mr. Ho did not give Ms. Chen either of the vehicles, but simply allowed her to drive them for family purposes, and registered them in her name for convenience. Ms. Chen's claim to the BMW and Mercedes is dismissed.
- f) UBS Ho Account
- [423] Ms. Chen's position is that she is entitled to an interest in the UBS Ho Account on the basis of unjust enrichment and constructive trust. Mr. Ho's position is that the UBS Ho Account belongs beneficially to his First Family.
- [424] Mr. Ho has maintained complete control over the UBS Ho Account. He has decided how much to provide to his First Family and when to do so. He has also used funds from the UBS Ho Account to buy assets such as the Blundell Townhouse and the South Granville House.
- [425] While Mr. Ho may feel some moral obligation to his First Family to give them some of the benefit of the fortune he earned in Hong Kong, the UBS Ho Account belongs to Mr. Ho.
- [426] I turn then to Ms. Chen's claim on the basis of unjust enrichment.
- [427] Ms. Chen was not in a position to assist Mr. Ho in determining how to handle the UBS Ho Account, and did not do so.
- [428] Ms. Chen argued that Mr. Ho was unjustly enriched by her services during the term of their relationship.
- [429] I accept that Ms. Chen participated as an active homemaker for Mr. Ho throughout the period of their relationship. During the period that Ms. Chen lived in Zhuhai, from 1994 to 1997, Ms. Chen maintained a home for Mr. Ho's visits, although he was present less than half the time. For the period from 1997 to 2009, Ms. Chen actively maintained Mr. Ho's Second Family home, and cared for Raymond, and later for Ronald as well. Ms. Chen alone cared for Raymond and Ronald in Vancouver when Mr. Ho was in Hong Kong, which was several months each year.
- [430] I accept that Mr. Ho contributed some homemaking and child care. It is not necessary to try to precisely determine the proportion of the contribution of each.

I accept that Ms. Chen contributed more to the home and childcare than Mr. Ho. In any event, Mr. Ho would have been required to devote much more time in raising Ronald than he did if he had not had Ms. Chen's assistance.

[431] Mr. Wong argued on behalf of Ms. Chen that numerous other activities were a benefit to Mr. Ho and a detriment to Ms. Chen. It is not necessary to detail the activities which I do not accept as a benefit to Mr. Ho and a detriment to Ms. Chen.

[432] As a result, I accept that Mr. Ho was enriched by Ms. Chen's services during their relationship. If he had been required, for example, to raise Ronald without

Ms. Chen's assistance, he would have incurred significant expense and would have depleted his capital more quickly than he has in fact.

[433] Ms. Chen suffered the detriment that she did not pursue a career or another relationship during her relationship with Mr. Ho.

[434] The evidence regarding the amount the national food store allegedly paid to its shareholders was not admissible for its truth and was not reliable. I am not prepared to quantify Ms. Chen's lost opportunity for a career on the basis of the amount allegedly paid to shareholders of the national food store.

[435] Nonetheless, Ms. Chen did not work during the 14 years of the relationship, and has lost the development of a career.

[436] However, Ms. Chen obtained significant benefits. She received monthly spending money and annual red packet money. Ms. Chen's evidence is that Mr. Ho gave her about \$420,000 CAD in pocket money and annual new year's gifts. Mr. Ho's evidence is that the total was about \$487,500.

[437] I accept Ms. Chen's calculation of the amount Mr. Ho paid her.

[438] Ms. Chen did not simply save all those funds. She spent some of that money to enjoy her lifestyle, although she saved some as well. What has survived from those payments is essentially Ms. Chen's investment of about \$585,000 in the Telford Flat (less what she may owe her aunt and brother) and jewellery. Neither party tendered appraisals of the jewellery. For the purposes of this analysis, I estimate the present value of the jewellery at \$100,000 CAD.

[439] Most significant is Ms. Chen's receipt of the interest in the South Granville House and the Le Point Flat sale proceeds, as discussed above. In light of that,

Mr. Ho has not been unjustly enriched by Ms. Chen's services.

[440] As a result, Ms. Chen's claim to an interest in the UBS Ho Account is dismissed.

g) UBS Alleged Joint Account

[441] Ms. Chen testified that Mr. Ho told her that he and she had a joint account at UBS. However, she thought that UBS used her signature from the card she signed for HSBC, which is unlikely. The evidence did not include any documentation from such an alleged account.

[442] I conclude that the parties did not at any time have a joint account at UBS.

h) HSBC Joint Account

[443] The HSBC Joint Account was connected with Mr. Ho's sole account. Around the time of the separation between Ms. Chen and Mr. Ho, Mr. Ho removed the funds on deposit in the HSBC Joint Account and put them into his own account.

[444] Ms. Chen seeks a declaration that she was the beneficial owner of a one-half interest in the HSBC Joint Account, and that Mr. Ho must compensate her for his disposal of it. She claims that it was worth about 5.1 million HKD as at December 8, 2008, being about \$665,000 CAD, and that Mr. Ho should be ordered to compensate her for half of that amount.

[445] The evidence conflicted about how much if anything Ms. Chen contributed to the HSBC Joint Account. Mr. Ho testified that Ms. Chen did not contribute any funds. Ms. Chen testified that she contributed 93,200 HKD (about \$12,000 CAD), in about 2002, and that she thought she had contributed more, but could not remember.

[446] The amount on deposit in the HSBC Joint Account fluctuated wildly. For example, on January 6, 2006 it was 400,000 HKD; on January 7, 2009, about 4.5 million HKD; and zero on June 2, 2009.

[447] I conclude that the parties held the HSBC Joint Account to enable Ms. Chen to set up her sole account, and to give the other access to any funds in the HSBC Joint Account in the event that one of them passed away during their relationship. However, I conclude that the parties did not agree that any particular amount must be maintained in the HSBC Joint Account, and Mr. Ho did not make a gift to

Ms. Chen of the amount in that account at any particular time.

[448] Ms. Chen has not established that she made any deposits to the HSBC Joint Account which were not repaid to her.

[449] I conclude the HSBC Joint Account consisted of Mr. Ho's funds, and he was entitled to remove them.

[450] I turn then to Ms. Chen's claim to an interest in the HSBC Joint Account on the basis of unjust enrichment.

[451] As discussed above regarding the UBS Ho Account, I accept that Ms. Chen enriched Mr. Ho during their relationship, and that Ms. Chen suffered a detriment. However, particularly in light of the gift to her of the interest in the South Granville Home, Ms. Chen is not entitled to a share in the HSBC Ho Account on the basis of unjust enrichment.

[452] Ms. Chen is not entitled to any compensation in respect of the HSBC Joint Account.

i) HSBC Ho Account

[453] Ms. Chen seeks a declaration that she was the beneficial owner of a one-half interest in the HSBC Ho Account, and that Mr. Ho must compensate her for the appropriate amount. This claim is based on unjust enrichment.

[454] For the reasons set out above regarding the UBS Ho Account, I conclude that Ms. Chen has been adequately compensated for any benefits she conferred on Mr. Ho. As a result, her claim to an interest in the HSBC Ho Account on the basis of unjust enrichment is dismissed.

B. Spousal Support

[455] The parties agreed that Ms. Chen is entitled to receive spousal support from Mr. Ho, and that the spousal support should be ordered as a lump sum. The two primary sources of Mr. Ho's income are the Two Broadway Properties and the UBS Ho Account.

[456] Ms. Chen argued that Mr. Ho's annual income for determining spousal support should be considered to be about \$700,000 CAD annually. Mr. Ho argued that the proper figure was about \$245,000 CAD.

[457] Ms. Chen's position was that the court should draw adverse inferences against Mr. Ho and in addition impute income to him. She seeks support at the high end of the range of the Spousal Support Advisory Guidelines starting from the date that she commenced this lawsuit.

[458] Mr. Ho, through counsel, admitted for the purpose of determining spousal support that his income from the Two Broadway Properties should be considered to be \$170,000 CAD per year, being about the net rental income (as calculated in the tax returns) from the Two Broadway Properties plus \$30,000 CAD of management fees shown as payable to Ricky.

[459] Ms. Chen's position was that Mr. Ho's income from the Two Broadway Properties was \$344,100 CAD.

[460] Ms. Chen's counsel argued that the income from the Two Broadway Properties should be considered on the basis of transactions in the H & Y bank account. I do not accept this method of determining the income.

[461] The expenses Mr. Ho claimed in respect of the income from the Two Broadway Properties included \$9,000 in 2011 for trips to Hong Kong. Mr. Ho is resident in Vancouver. The Two Broadway Properties are subject to long term leases. It is not necessary for Mr. Ho to go to Hong Kong or for the members of his First Family to come to Vancouver in connection with the Two Broadway Properties. As a result, I consider the net income to be increased by the amount of those expenses for the purposes of determining spousal support.

- [462] The reported income from the Two Broadway Properties was also reduced by payment of legal fees in connection with this litigation. Those expenses should not be considered for the purposes of determining Mr. Ho's income for spousal support. As a result, I consider the income after deducting \$12,800 in legal expenses for 2011.
- [463] Ms. Chen's counsel challenged numerous other expenses relating to the Two Broadway Properties. However, I accept the other claimed expenses as proper in considering spousal support.
- [464] With respect to Mr. Ho's income from the Two Broadway Properties, I conclude that it is \$220,000 per year.
- [465] Mr. Ho's position is that he earns a further \$100,000 CAD per year from the UBS Ho Account. Ms. Chen's position is that Mr. Ho could earn more on the funds in the USB Ho Account than he presently earns. Ms. Chen's counsel argued that the court should impute income from the UBS Ho Account at the rate of 2.5% to 5% per year, being about \$185,000 CAD to \$373,000 CAD.
- [466] Mr. Ho essentially testified that he preferred to maintain his funds in cash or similar investments, because he had suffered losses when he invested in stocks, and he did not want risky investments in light of his age.
- [467] Mr. Ho maintained relatively low-risk investments for a period even prior to separation from Ms. Chen. I am not prepared to impute income to Mr. Ho on the basis that it would be possible to earn more on the UBS Ho Account and the HSBC Ho Account if he invested in riskier investments. I do not accept that 2.5% or 5% per year are reasonable figures for determining Mr. Ho's income from the UBS Ho Account, and prefer the amounts that he has in fact earned.
- [468] As a result, Mr. Ho's income from the UBS Ho Account and the HSBC Ho Account for spousal support purposes will be considered to be about \$100,000 per year.
- [469] For the purposes of determining spousal support, Mr. Ho's income is \$325,000 CAD per year, consisting of about \$220,000 from the Two Broadway Properties, about \$100,000 from the UBS Ho Account, and about \$5,000 from the HK Parking Stall.
- [470] Ms. Chen's income should be considered on the basis of about \$7,600 CAD per year, being the net income from the Telford Flat.
- [471] Ms. Chen argued that spousal support should be retroactive to the commencement of this lawsuit, less the \$2,000 per month which Mr. Ho paid, initially voluntarily commencing in January 2010, and later pursuant to my order of January 8, 2013. I calculate the amount paid between January 1, 2010 and March 31, 2013 to be \$78,000 CAD.

- [472] I accept for the purposes of spousal support that the relationship between the parties commenced in 1994 and lasted 14 years. While Mr. Ho spent time with Ms. Yip in Hong Kong, Mr. Ho spent significant time with Ms. Chen in Zhuhai and in Canada, and made a home with her and had a son with her. Ms. Chen was dependent on Mr. Ho, and remained available to him whenever he wanted to be with her.
- [473] I calculated the SSAG for a 14 year relationship, with Mr. Ho earning \$325,000 and Ms. Chen earning \$7,600. The SSAG considered a duration of spousal support of 7 to 14 years from the date of separation, and suggested the midpoint of 10 ½ years for the purpose of a lump sum award. In light of Ms. Chen's need to train for employment, and to learn English, spousal support reflecting 10 ½ years of support is reasonable.
- [474] The SSAG considered monthly support in the range of about \$3,950 CAD to about \$5,250 CAD per month. Ms. Chen's entitlement to a share of the South Granville House and the Le Point Flat sale proceeds should provide her with housing. As a result, an award at the low end of the range is appropriate.
- [475] The SSAG calculated the net present value of lump sum support in the range of about \$325,000 CAD to about \$425,000 CAD.
- [476] In all the circumstances, a fair award for spousal support for Ms. Chen would be a lump sum of \$325,000 CAD. Less Mr. Ho's payments of \$78,000 CAD, Ms. Chen is entitled to lump sum spousal support of \$247,000 CAD.

SUMMARY

[477] In summary, the court order is as follows:

- a) by consent, a declaration that Ms. Chen owns the jewellery in her possession or control;
- b) by consent, a declaration that Ms. Chen owes Mr. Ho the Telford Loan in the sum of 650,000 HKD. If the parties are not able to agree on the appropriate conversion rate to determine the amount outstanding, the matter shall be determined by the Registrar;
- c) by consent, a declaration that Ms. Chen is entitled to spousal support from Mr. Ho;
- d) Mr. Ho is ordered to provide all the title documents relating to the Telford Flat to Ms. Chen;
- e) Ms. Chen is entitled to a declaration that the South Granville Chen/Ho Transfer is null and void;
- f) Ms. Chen is entitled to a half interest as tenant in common in the South Granville house, and the parties have liberty to apply in respect of Mr. Ho's purchase of that interest;
- g) Ms. Chen's claim to an interest in H & Y and the Two Broadway Properties is dismissed;
- h) Mr. Ho must pay Ms. Chen half of the net sale proceeds of the Le Point Flat. The parties have liberty to apply if they cannot agree on the precise amount;

- i) Ms. Chen's claim to the BMW and Mercedes is dismissed;
- j) Ms. Chen's claim to an interest in the UBS Ho Account is dismissed;
- k) Ms. Chen's claim to compensation regarding the HSBC Joint Account is dismissed;
- l) Ms. Chen's claim to an interest in the HSBC Ho Account is dismissed; and
- m) Mr. Ho shall pay Ms. Chen \$242,000 CAD as lump sum spousal support.

[478] The parties agreed that Ms. Chen owns the Telford Flat and the Zhuhai Flat. However, this court cannot make an order regarding title to foreign property.

[479] If the parties have submissions to make on costs, they should provide written submissions. Upon review of the written submissions, I may conclude that an oral hearing is necessary. If counsel cannot agree on a schedule for such written submissions, they should write the registry and seek a hearing before me to determine the schedule.

"Gray J."

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