

CANADA / JUDGMENT

Collins v. Bernard

2018 BCSC 2067

COURT

Supreme Court of British Columbia

DECIDED

23 November 2018

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2018 BCSC 2067 Collins v. Bernard

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Collins v. Bernard,

2018 BCSC 2067

Date: 20181123

Docket: S184313

Registry: New Westminster

Between:

Kirsten Sara Collins

Plaintiff

And

Darleen Patricia Bernard

Defendant

Before: The Honourable Mr. Justice Ball

Reasons for Judgment

Counsel for the Plaintiff:

M. Menkes

Counsel for the Defendant::

Darleen Bernard

(Appearing in Person)

Place and Dates of Trial:

New Westminster, B.C.

August 21 - 23, 2018

Place and Date of Judgment:

New Westminster, B.C.

November 23, 2018

Introduction

- [1] This case involves three separate claims brought by a daughter against her mother. The parties are clearly estranged. Apart from the divorce between the mother and her former husband, no explanation was provided to the court for the estrangement.
- [2] A difficulty that arises in all three of the claims brought is that the pleadings do not correspond to the evidence led and the arguments made on behalf of the plaintiff at trial. This sort of difficulty is more pronounced when, as in this case, the defendant is self-represented at trial and could not appreciate the necessary linkage between the pleadings and the evidence led at trial.
- [3] The Supreme Court Civil Rules, B.C. Reg. 168/2009, describe in detail what is required in a notice of claim. Rule 3-1(2) provides:
- (2) A notice of civil claim must do the following:
- (a) set out a concise statement of the material facts giving rise to the claim;
 - (b) set out the relief sought by the plaintiff against each named defendant;
 - (c) set out a concise summary of the legal basis for the relief sought;
 - (d) set out the proposed place of trial;
 - (e) if the plaintiff sues or a defendant is sued in a representative capacity, show in what capacity the plaintiff sues or the defendant is sued;
 - (f) provide the data collection information required in the appendix to the form;
 - (g) otherwise comply with Rule 3-7.
- [Emphasis added.]
- [4] The first claim relates to a property located at 23813 Zeron Avenue in Maple Ridge, B.C. (the "Property"). The Property is presently owned by the defendant as to a 99/100th share with the final 1/100th share owned in equal thirds by the plaintiff, her grandmother Margaret Willox Frank (now Ewan) (henceforth "Ms. Ewan"), and the defendant. The plaintiff seeks a

declaration that the defendant holds 1/3 of the Property in trust for the plaintiff on the basis of a resulting trust or, in the alternative, a constructive trust as a remedy for unjust enrichment. It is of interest to note that Ms. Ewan is not a party and has not sought any interest in the Property.

[5] The second claim is framed in the notice of civil claim with the following statement of facts:

Collins and Bernard share joint liability on a CIBC line of credit account number [ending with the numbers] 531 ("LOC"). Collins has used \$4750 of the \$16,000 available on the LOC. Bernard has personally borrowed against the balance. Collins has made demand on Bernard to close the account and repay the debt owed on the LOC or buy Collins out and take Collins off the LOC account, but Bernard has neglected or refused to do so.

[6] In the relief sought, this claim is framed in general damages for conversion so, in accordance with Rule 3-7(14), no specific amount is claimed.

[7] The third claim relates to a 2007 Saturn Ion vehicle (the "Saturn"), which the plaintiff alleges was purchased by her for \$3,100 but was registered in the defendant's name. The plaintiff claims to be the "equitable owner" of the Saturn.

Background

[8] The chronology of this case begins in 2010 when the defendant left Ontario to escape what she testified was violent conduct against her by her then husband. The defendant moved to British Columbia where she was invited to seek shelter in a condominium owned by her mother, Ms. Ewan, located in Maple Ridge, B.C. In 2010, the plaintiff also moved to B.C. after completing three of four years of university. She also moved into her grandmother's condominium. Next, when the younger sister of the plaintiff had completed grade 11 in Ontario, she also moved to B.C. She too moved into Ms. Ewan's condominium.

[9] Unfortunately for all concerned, the younger sister was not yet over the age of majority when she moved into her grandmother's condominium. As a result, she could not lawfully remain there because a by-law required all occupants to be at least over the age of majority. Other condominium owners concerned by the presence of younger tenants pressured the defendant and her daughters to move out of the condominium.

[10] As a result, the defendant began looking with considerable urgency for a home in the Lower Mainland area of B.C. The plaintiff accompanied her mother to look at some houses for sale. Eventually, the Property was selected which suited the needs of the family and was within budget. The evidence before this court was that the plaintiff had no involvement in the budgetary considerations around the choice of the Property purchased, no involvement in the choice of that particular property and no involvement in the negotiations which led to the purchase of that property.

- [11] At the time that the original financing for the Property was to be arranged, the defendant had not yet found a job in British Columbia and a settlement of divorce proceedings with her former spouse had not been completed.
- [12] To help her daughter purchase the Property, Ms. Ewan kept a long-time promise to the defendant and loaned the defendant \$100,000 which the defendant then paid as the down payment on the Property. Street Capital Financial Corporation ("Street Capital") was prepared to have the defendant execute the mortgage on the Property but, based on the real property documents filed as exhibits at trial, required Ms. Ewan and the plaintiff to go onto the title.
- [13] No specific evidence was called by any party as to the particular reason why the defendant's name would not be permitted on title. Apparently this was at the behest of Street Capital. It would be inappropriate for this court to begin speculating, without specific evidence, concerning that matter.
- [14] In any event, no evidence was led by the plaintiff of any agreement or discussion of any kind between the plaintiff and the defendant which would lead the plaintiff to believe or expect that she would acquire any interest in the Property by being placed on title. In her examination-in-chief, the plaintiff stated that she did not discuss shares in the Property with the defendant. Counsel asserted in submissions that there was an agreement of purchase and sale for the Property signed by the parties and Ms. Ewan. However, no such document was entered into evidence at trial.
- [15] In 2011 when the Property was purchased, the owners listed on title were Ms. Ewan and the plaintiff as joint tenants. The purchase price of the Property was \$497,000 and the mortgage owing at the outset was \$402,371.20 subject to monthly installment payments of \$1,954.20.
- [16] According to the evidence of the plaintiff, at the time the Property was purchased, the plaintiff earned about \$2,000.00 monthly. She did not pay rent for her accommodation in either her grandmother's home or in the home on the Property.
- [17] At no time did the plaintiff contribute to the mortgage, taxes, or utilities for the Property. On the evidence before this court, the only person who made such payments was the defendant.
- [18] There was simply no air of reality to the suggestion that the mere fact that the plaintiff had a job, the income from which was clearly insufficient to support payments on the mortgage for the Property, would positively influence a mortgage lender.
- [19] The plaintiff led evidence that she assisted with renovations on the house on the Property after it was purchased, but her evidence lacked detail. The defendant testified that the plaintiff's efforts were limited to painting her own bedroom, something which would not be considered as consideration for the purchase of the Property. The defendant's evidence on this point was not challenged nor questioned by the plaintiff. Likewise, the plaintiff gave evidence concerning her provision of interior design services. But no evidence of the

particular services or their value, if any, was given before the court.

- [20] The plaintiff also led evidence that she contributed to the home by obtaining some discounts from suppliers and installers of cabinetry and flooring in the home. There was no evidence that the obtaining of discounts involved any cost paid by the plaintiff; she made no financial contribution to the payment for the cabinetry or to the flooring installed in the home. Further, no details of the quantum of the discounts alleged to have been obtained was presented in the evidence.
- [21] The plaintiff also claimed occasional contributions of cash to the defendant but did not know the amount of these contributions, nor when in time these alleged cash contributions occurred. Counsel for the plaintiff made no argument based on evidence which contained any calculable amount of these alleged contributions. The onus of proof for such a claim rested squarely on the plaintiff.
- [22] The plaintiff, with the assistance of counsel, reviewed several hundred copied pages of credit card records (Exhibit 2) which were said to demonstrate consideration flowing from the plaintiff to the defendant in relation to the Property. The credit card records were said to support purchases of household items from shampoo, makeup and female products to restaurant meals and take-out foods, all for the use of the parties in unspecified proportions. The plaintiff, when cross-examined, agreed that she was guessing about items purchased and had no memory of the actual purchases at particular stores contained in the exhibited records.

Transfer of the Property

- [23] On or about May 21, 2014, the plaintiff signed a handwritten document which stated "I, Kirsten Collins, give back the [Property] to Darleen Patricia Bernard." Ms. Ewan signed an identical document.
- [24] On or about June 11, 2014, the plaintiff and Ms. Ewan attended at the offices of a law firm retained by the defendant for the purpose of transferring the Property into the name of the defendant as to a 99/100th interest with the remaining 1/100th interest to be held in equal thirds by the plaintiff, Ms. Ewan and the defendant. The law firm provided a document entitled "Acknowledgement of Legal Representation" to each of Ms. Ewan and the plaintiff which stated as follows:

Re: Transfer of 23813 Zeron Avenue, Maple Ridge, B.C. V2W 1E3

We, the undersigned, hereby confirm and acknowledge that you are solicitors for Darleen Patricia Bernard, and that you do not act on our behalf. We understand that although you may attend to the execution and attestation of the transfer documents, you will not advise us with respect to the above-noted transaction. You have advised us to obtain independent legal representation but we have chosen not to do so.

Dated at Burnaby, B.C. this 11th day of June, 2014.

- [25] The signatures of Ms. Ewan and the plaintiff appeared beneath the foregoing. There was no evidence given by the plaintiff that there was any error in the document referred to in the foregoing paragraph.
- [26] The transfer of the Property was accepted for registration in the New Westminster Land Title office on June 12, 2014 under number CA3775447.
- [27] During the trial, on August 21, 2018, immediately before the lunch hour adjournment, the plaintiff was asked by her counsel about health problems she experienced in October of 2014. She began to testify about an apparent psychotic incident or incidents in or about October of 2014, which resulted in her being restrained and taken involuntarily to hospital where she had several periods of treatment. This testimony included reference to a fog or other mental incapacity suffered by the plaintiff because "she [the defendant] got me hopped up on medication" at the time of signing the documents required to transfer the Property to the defendant. No pleadings of the plaintiff contained any reference to any inability of the plaintiff to exercise an independent intent to execute legal documents because of mental incapacity or psychosis, nor was there any pleading alleging the provision of medication by the defendant to the plaintiff.
- [28] As noted at the outset of these Reasons, Rule 3-1(2) requires a plaintiff to set out in his or her notice of civil claim a concise statement of the material facts giving rise to the claim, as well as a concise summary of the legal basis for the relief sought.
- [29] The requirements of this rule have been subject to consistent judicial commentary for a considerable period of time. In the case of *Wyman v. Vancouver Real Estate Board* (1957), 8 D.L.R. (2d) 724 (B.C.C.A.) at para. 10 [Wyman], the following appears:
- The cases make it clear that a party must plead all the material facts on which he intends to rely at the trial, otherwise he is not entitled to give evidence of them at the trial. It is clear too, I think, that no averment must be omitted which is essential to success.
- [30] The principle set out in *Wyman* has been repeatedly followed including in *Basyal v. Mac's Convenience Stores Inc.*, 2018 BCCA 235, which refers in paras. 39-42 to three other decisions of the British Columbia Court of Appeal and one decision of this court. Those cases follow *Wyman* and "confirm the necessity for material facts to be pleaded in order to "outline" the claim or defence": *Basyal* at para. 42.
- [31] Further, s. 3(1) of the Adult Guardianship Act, R.S.B.C. 1996, c. 6 provides: "Until the contrary is demonstrated, every adult is presumed to be capable of making decisions about the adult's personal care, health care and financial affairs."

- [32] The "contrary is demonstrated" if, on an application under s. 3(1) of the Patients Property Act, R.S.B.C. 1996, c. 349, the court is satisfied, based on affidavits of two medical practitioners setting out their opinion, that the person who is the subject of the application is incapable of managing his or her person or affairs or both.
- [33] None of these issues were raised in a concise statement of material facts in the notice of claim of the plaintiff. Evidence of the plaintiff's alleged mental incapacity was therefore not admissible because it was not pleaded.
- [34] This court made a ruling in the trial, following submissions of the plaintiff's counsel, declaring that the purported evidence of the plaintiff's medical or psychiatric condition, going to her intent to return the title to the Property to the defendant, was not admissible and would not be considered in this court's reasons for judgment.
- [35] The plaintiff did not provide in her pleadings any basis to allow evidence to be called in order to challenge or displace the statutory presumption of indefeasible title referred to in s. 23(2) of the Land Title Act, R.S.B.C. 1996, c. 250. That subsection provides that "[a]n indefeasible title is conclusive evidence at law and in equity, as against the Crown and all other persons, that the person named in the title as registered owner is indefeasibly entitled to an estate in fee simple to the land described in the indefeasible title".

Trust Claims

- [36] The claims by the plaintiff to an equitable interest in the Property are at best puzzling. Paragraph 3 of Part 1 of the notice of civil claim states:

At all material times up to June 12, 2014, the Property's title was held in joint tenancy between Collins [the plaintiff], her mother Bernard [the defendant] and Collin's grandmother Margaret Willox Frank ("Frank") [Ms. Ewan] as equal 1/3 interests, and all three resided on the property.

- [37] The land title documents exhibited at trial demonstrate that this pleading was not accurate in that the title to the Property from 2011 up to June 12, 2014 was registered only in the names of the plaintiff and Ms. Ewan; there was no joint tenancy involving three parties. Despite the defendant paying the initial \$100,000 payment and all subsequent payments for the mortgage, insurance, property taxes, utilities and renovations, the defendant's name only appeared on the mortgage together with the names of the plaintiff and Ms. Ewan.
- [38] At any rate, the plaintiff has advanced two forms of trust to claim an interest in the Property: a resulting trust and a constructive trust.

Resulting Trust

- [39] The recent decision of the Supreme Court of Canada in *Nishi v. Rascal Trucking Ltd.*, 2013 SCC 33, describes at para. 21 the nature of a resulting trust in circumstances not dissimilar to the present case:

The purchase money resulting trust is a species of gratuitous transfer resulting trust, where a person advances a contribution to the purchase price of property without taking legal title. Gratuitous transfer resulting trusts presumptively arise any time a person voluntarily transfers property to another unrelated person or purchases property in another person's name (D. W. M. Waters, M. R. Gillen and L. D. Smith, eds., *Waters' Law of Trusts in Canada* (4th ed. 2012), at p. 397.

[40] In the absence of a factual finding of an express or implied intention to create a resulting trust, none should be found: *Pettikus v. Becker*, [1980] 2 S.C.R. 834.

[41] At para. 22 of *Nishi*, the Court cites *Kerr v. Baranow*, 2011 SCC 10 at para. 12 for the proposition that it has been "settled law since at least 1788 in England (and likely long before) that the trust of a legal estate, whether in the names of the purchaser or others, 'results' to the person who advances the purchase money".

[42] In the case of *Wong v. Huang*, 2012 BCSC 975, Justice Ehrcke provided a helpful review of trust principles following a gratuitous transfer as follows:

19 The starting point for a consideration of whether a gratuitous transfer of property from one individual to another should be treated as a gift or whether the property is subject to return or repayment, is the decision of the Supreme Court of Canada in *Pecore v. Pecore*, 2007 SCC 17. There, the Court described the two different presumptions that may apply, depending on the circumstances: the presumption of resulting trust and the presumption of advancement. The Court described the nature of these competing presumptions at paras. 24 and 27-28, respectively:

[24] The presumption of resulting trust is a rebuttable presumption of law and general rule that applies to gratuitous transfers. When a transfer is challenged, the presumption allocates the legal burden of proof. Thus, where a transfer is made for no consideration, the onus is placed on the transferee to demonstrate that a gift was intended: see *Waters' Law of Trusts*, at p. 375, and E. E. Gillese and M. Milczynski, *The Law of Trusts* (2nd ed. 2005), at p. 110. This is so because equity presumes bargains, not gifts.

...

[27] The presumption of resulting trust is the general rule for gratuitous transfers. However, depending on the nature of the relationship between the transferor and transferee, the presumption of a resulting trust will not arise and there will be a presumption of advancement instead: see *Waters' Law of Trusts*, at p. 378. If the presumption of advancement applies, it will fall on the party challenging the transfer to rebut the presumption of a gift.

[28] Historically, the presumption of advancement has been applied in two situations. The first is where the transferor is a husband and the transferee is his wife: *Hyman v. Hyman*, [1934] 4 D.L.R. 532 (S.C.C.), at p. 538. The second is where the transferor is a father and the transferee is his child, which is at issue in this appeal.

20 Regardless of which presumption applies, either presumption may be rebutted by evidence on the ordinary civil standard of a balance of probabilities. The Court explained at paras. 42-44:

- [42] There has been some debate amongst courts and commentators over what amount of evidence is [page814] required to rebut a presumption. With regard to the presumption of resulting trust, some cases appear to suggest that the criminal standard, or at least a standard higher than the civil standard, is applicable: see e.g. *Bayley v. Trusts and Guarantee Co.*, [1931] 1 D.L.R. 500 (Ont. S.C., App. Div.), at p. 505; *Johnstone v. Johnstone* (1913), 12 D.L.R. 537 (Ont. S.C., App. Div.), at p. 539. As for the presumption of advancement, some cases seem to suggest that only slight evidence will be required to rebut the presumptions: see e.g. *Pettitt v. Pettitt*, [1970] A.C. 777 (H.L.), at p. 814; *McGrath v. Wallis*, [1995] 2 F.L.R. 114 (Eng. C.A.), at pp. 115 and 122; *Dreger (Litigation Guardian of) v. Dreger* (1994), 5 E.T.R. (2d) 250 (Man. C.A.), at para. 31.
- [43] The weight of recent authority, however, suggests that the civil standard, the balance of probabilities, is applicable to rebut the presumptions: *Burns Estate v. Mellon* (2000), 48 O.R. (3d) 641 (C.A.), at paras. 5-21; *Lohia v. Lohia*, [2001] EWCA Civ 1691 (BAILII), at paras. 19-21; *Dagle*, [1990] P.E.I.J. No. 54, at p. 210; *Re Wilson*, [1999] O.J. No. 1274, at para. 52. See also *Sopinka et al.*, at p. 116. This is also my view. I see no reason to depart from the normal civil standard of proof. The evidence required to rebut both presumptions, therefore, is evidence of the transferor's contrary intention on the balance of probabilities.
- [44] As in other civil cases, regardless of the legal burden, both sides to the dispute will normally bring evidence to support their position. The trial judge will commence his or her inquiry with the applicable presumption and will weigh all of the evidence in an attempt to ascertain, on a balance of probabilities, the transferor's actual intention. Thus, as discussed by *Sopinka et al.* in *The Law of Evidence in Canada*, at p. 116, the presumption will only determine the result where there is insufficient evidence to rebut it on a balance of probabilities.

21 In *Pecore*, the Court considered whether the presumption of advancement should be expanded to apply to a wider class of family relationships, including dependant adult children. The Court concluded at para. 40:

I am therefore of the opinion that the rebuttable presumption of advancement with regard to gratuitous transfers from parent to child should be preserved but be limited in application to transfers by mothers and fathers to minor children.

- [43] In the case at bar, the plaintiff was not a minor child at the date of the transfer to her of an interest in the Property. The plaintiff brought forward no evidence that the defendant intended to transfer an interest in the Property to the plaintiff and the defendant testified she had no intention to give any interest in the Property to the plaintiff.

- [44] In order to rebut the presumption of resulting trust, the recipient of the property in dispute who provides no consideration at the time of the transfer must prove that the person who advanced the funds intended a gift: see *Pecore v. Pecore*, 2007 SCC 17 at paras. 24-25, 44. "The relevant intention is the intention of the person who advanced the funds at the time of the contribution of the purchase price": Nishi at para. 30 citing *Pecore* at para. 59.
- [45] In the case at bar, there was not a scintilla of evidence from the plaintiff or any other witness that the defendant intended to gift an interest in the Property to the plaintiff. The only person who advanced money for the purchase of the Property was the defendant; yet the plaintiff's name was placed gratuitously on the title.
- [46] At the time of the initial acquisition of the Property, I find that Ms. Ewan and the plaintiff were mere placeholders on the title for the defendant and therefore "purchase price" resulting trustees for the defendant. This finding is supported by the document signed by the plaintiff which states that the plaintiff is "giving back" the Property to the defendant. This language is wholly inconsistent with any retained trust or other interest in the Property in favour of the plaintiff. In this case, I find there is a presumption of resulting trust which arose in favour of the defendant because she alone advanced the purchase money for the Property in 2011, but did not take legal title.
- [47] The finding that the plaintiff was a purchase price resulting trustee for the defendant defeats any trust claim by the plaintiff concerning the transfer from the plaintiff to the defendant in 2014. The plaintiff through counsel submitted that the transfer of the Property in June of 2014 was gratuitous, giving rise to a resulting trust in favour of the plaintiff. However, I have found that the plaintiff did not possess a beneficial interest in the Property from the outset. What took place in 2014 was the execution of the initial resulting trust in favour of the defendant.
- [48] Based on the facts of this case, the plaintiff has not met the onus of proof to rebut the presumption of resulting trust in favour of the defendant. I reject the plaintiff's claim that in the circumstances of this case the defendant was a trustee for the plaintiff. To the contrary, I find that when the plaintiff's name was placed on the title to the property in 2011, the plaintiff became a trustee of a resulting trust for the benefit of the defendant.

Constructive Trust

- [49] A constructive trust may be impressed on property as a remedy for unjust enrichment. The test for unjust enrichment has three elements: an enrichment of the defendant; a corresponding deprivation of the plaintiff; and the absence of any juristic reason for the enrichment (*Garland v. Consumers' Gas Co.*, 2004 SCC 25 at para. 30).
- [50] The plaintiff says that the defendant was enriched, and the plaintiff correspondingly deprived, in the following ways:
- a) the plaintiff assisted with renovations on the house after it was purchased;

- b) the plaintiff contributed to the renovations to the house by obtaining some discounts from suppliers and installers of cabinetry and flooring for the house; and
 - c) the plaintiff made occasional cash contributions to the defendant, including purchasing food and certain household items.
- [51] None of these alleged contributions by the plaintiff could support a finding that the plaintiff was deprived or the defendant enriched. The plaintiff's physical contributions to the renovations amounted only to painting her own room, which was to her benefit. Further, the plaintiff failed to show that she was deprived by obtaining discounts from third party suppliers for flooring and cabinetry. A discount obtained from a third party is a benefit to the plaintiff, not a deprivation suffered by her.
- [52] As for the alleged cash contributions reflected in the records contained in Exhibit 2, they were common expenses for food, restaurant meals, female products and other sundries purchased for the mutual use and enjoyment of the family members. The plaintiff agreed that she personally used the shampoos and other items and ate the food, sharing with her mother, sister and grandmother. These alleged cash contributions were therefore hardly deprivations of the plaintiff; she benefited from them.
- [53] Further, the bulk of these credit card payments were made after the transfer in 2014 and could not therefore become a basis for the plaintiff to claim a proprietary interest in the Property.
- [54] Finally, at the time of these purported purchases the plaintiff was residing rent-free in the Property. An adult child living in such circumstances who had income might be expected to contribute to her own upkeep.
- [55] In the result, the claim of the plaintiff for an interest in the Property based on any form of trust in the Property is dismissed.

The Claim Respecting the Line of Credit

- [56] As noted above, the pleadings of the plaintiff and the evidence called by the plaintiff are quite different in describing the claim with respect to the line of credit.
- [57] In the relief sought portion of the notice of civil claim, the plaintiff only states in relation to the line of credit the following: "Damages concerning Bernard's conversion of the LOC [line of credit]".
- [58] During the testimony of the plaintiff, she was directed to a record of the deposit of a cheque from ICBC dated February 25, 2015, which represented the value of a vehicle, referred to as a Fiat, destroyed in a collision while the plaintiff was driving. This cheque was not referred to in the notice of civil claim.
- [59] The defendant was the registered owner of the Fiat, which she had purchased.

- [60] The cheque deposited was in the amount of \$26,187.84; however, while the plaintiff testified she deposited the cheque into the line of credit account, no copy of the cheque was produced. No evidence of the payee or payees on the face of that cheque was before the Court. As the plaintiff was one of the account holders, she could have required the bank involved to produce a copy of the cheque, but did not do so nor did the plaintiff explain in evidence any inability to obtain a copy of the cheque.
- [61] In these circumstances, the court may consider drawing an adverse inference against the plaintiff, at least to the effect that the information on the cheque would not support the claim of the plaintiff. That inference is appropriate in these circumstances where the plaintiff bore the onus of proof.
- [62] There was no evidence that the plaintiff has made or has been required to make any payment whatsoever on the line of credit at any time, or that her potential liability thereunder has ever had any negative effect on her. She is liable on paper for a debt but has not made nor been required to make any payment to retire the line of credit or any portion thereof. As no loss or damages have been proven by the plaintiff, the claim for damages in relation to the line of credit is dismissed.

The Claim for the 2007 Saturn Ion

- [63] The Saturn Ion was purchased by the defendant, and registered in her name. The defendant also paid for the insurance on this vehicle. The plaintiff asserted a trust interest in the Saturn, but there was no evidence of a factual or legal basis for this claim. It is not uncommon for a parent to provide access to a motor vehicle to offspring in this society, where the vehicle is principally used by the offspring.
- [64] Whatever the basis of the alleged trust, there was no evidence in support of a trust agreement in relation to this vehicle. The vehicle was purchased for \$3,100. It was apparently damaged on the driver's side and left parked outside the defendant's home for sometime. The defendant was sued as the owner of the vehicle but it was driven by the plaintiff with the consent of the defendant at the time of the accident. No evidence was presented of its value after it was left in a damaged condition at the defendant's residence. Eventually, it was donated to a charity. There was no proof of a calculable loss to the plaintiff and no basis demonstrated for a claim in damages. This claim is also dismissed.

Costs

- [65] The causes of action raised by the plaintiff against the defendant have been dismissed and normally costs would follow the event. An order for costs is made against the plaintiff in favour of the defendant pursuant to Appendix B, unless there are circumstances, unknown to the court, which would make such an order inappropriate. The parties have leave to bring such circumstances to the attention of the Court in writing within 14 days of the date of these Reasons, otherwise the order aforesaid is confirmed as of that date.

"Ball J."

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