

CANADA / JUDGMENT

Cummings v. Mann

2025 BCSC 2416

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 2416 Cummings v. Mann

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Cummings v. Mann,

2025 BCSC 2416

Date: 20251205

Docket: S15034

Registry: Rossland

Between:

Robert Neil Cummings

Plaintiff

And

Sharon Marie Mann

Defendant

Before: The Honourable Justice Burke

Reasons for Judgment

Counsel for the Plaintiff:

J.T.E. Gelber

The Defendant, appearing on her own behalf:

S. Mann

Place and Date of Trial:

Rossland, B.C.

October 28, 29 and 30, 2025

Place and Date of Judgment:

Vancouver, B.C.

December 5, 2025

Introduction

- [1] This claim concerns a dispute over property following the breakdown of a short relationship of approximately 10 months. The plaintiff initiated the claim to obtain vacant possession of his house after the defendant caused him to be removed from it for a period of several months.
- [2] Much of the relief sought by the plaintiff has already been granted by way of an interim order of Justice Lyster, including an order for possession of the house, made on November 23, 2021. The plaintiff's claim for damages, and the defendant's counterclaim for a proprietary interest in the house, remain outstanding.

Background

- [3] In setting out my findings in this matter I note while I have not set out the details of the evidence presented, I have considered all the documentary and oral evidence in coming to my conclusions.
- [4] The plaintiff, Mr. Cummings, is a retired federal parole officer and pensioner. He was widowed on October 9, 2020, when his wife of 22 years, Deborah Kershaw, passed away from cancer.
- [5] The defendant, Ms. Mann, worked remotely for the Department of National Defense, training personnel on computer systems. She now lives on Vancouver Island, near her adult son.
- [6] Both parties lived near Kingston, Ontario until mid-2021. Each owned their own houses. The plaintiff owned his house in Enterprise, and the defendant owned a farm property in Inverary, where she kept horses.
- [7] The parties met online in late 2020 and moved in together shortly after. The plaintiff lived mainly in the defendant's house. While the plaintiff did not pay rent, he assisted financially when requested by the defendant. The parties did not however mingle finances.

- [8] The couple eventually made a mutual decision to move to British Columbia. The plaintiff wished to distance himself from Enterprise, and the painful memories associated with his wife's passing, while the defendant wished to move closer to her adult son.
- [9] Each party sold their houses and kept the proceeds from the respective sales separately. The plaintiff did not know the amount of the proceeds from the sale of the defendant's house until this trial proceeded.
- [10] The defendant suggested and undertook the sale of the plaintiff's wife's extensive collection of clothes, shoes and jewellery on a site called Poshmark. The defendant kept the proceeds of those sales.
- [11] On May 7, 2021, the parties executed a contract to purchase a property in Rock Creek, BC (the "Property"), for \$880,000 with additional costs of \$500 for an appraisal, legal costs of \$2,000 and property transfer tax of \$15,600 for a total of \$898,100. While both parties were initially listed on the contract as buyers, it would later be amended to remove the defendant's name before closing. The plaintiff used \$523,100 from the net sale proceeds from his Ontario property and a \$375,000 mortgage to pay for the Property. The defendant contributed no funds to the purchase of the Property. Both the Property and the mortgage were registered in the plaintiff's sole name.
- [12] The plaintiff agreed that it was his intention at the time that the defendant be on title, and that they would hold the Property in joint tenancy. He said he did not understand the difference between joint tenancy and tenants in common.
- [13] The plaintiff provided the down payment for the Property and his expectation was that the defendant would financially contribute towards the Property after the sale of her Ontario home.
- [14] The plaintiff also purchased a diamond engagement ring totalling \$6,742.56 on May 11, 2021, and the parties were briefly engaged.
- [15] On May 20, 2021, the plaintiff purchased a 2021 Ford F-350 truck (the "Ford") from a dealership in Kelowna, and provided a deposit of \$20,000 as a down payment. While the Ford was registered in the names of the parties jointly, the loan for the balance of the payment was registered in the sole name of the plaintiff.
- [16] There is some dispute as to whether the Ford was intended to be a gift to the defendant. The defendant says the plaintiff insisted the parties purchase a larger vehicle for their life in BC, and urged the defendant to trade in her existing truck despite knowing she could not afford a new one. She also says that the plaintiff intended the Ford to primarily be used by her, as the plaintiff owned and drove a BMW.
- [17] The plaintiff says however that the Ford was purchased at the defendant's request, and that the defendant was supposed to pay for it using the sale proceeds of her Ontario house. This did not occur, despite the sale of the defendant's Ontario house in July 2021.

- [18] The evidence does not establish the Ford truck to be a gift. There was no definitive expression non documentary evidence to this effect.
- [19] From June 24 to June 29, 2021, the parties travelled from Ontario to BC driving in the plaintiff's car. The plaintiff paid for much of the costs of the move, including the shipping of furniture and other assets, and to transport the defendant's horses to BC. The defendant paid for the costs of food, fuel and hotels on the journey to BC.
- [20] On June 29, 2021, the parties arrived in Rock Creek and moved into the house on the Property. It was shortly after this that their relationship began to deteriorate.
- [21] In July 2021, the parties planned to obtain a new, larger mortgage from Heritage Credit Union. This was to occur concurrently with the defendant being added to the title to the Property.
- [22] On July 22, 2021, however, the plaintiff wrote an email to the lawyer who had been assisting them with the Property transaction, stating:
- Una I am very sorry but I am no longer comfortable placing Sharon on the title as joint tenancy. I don't know if this affects the refinancing but I would prefer not to include her in the mortgage and as I have supplied all capital to date I don't seen any legal reason to put her on the mortgage or title please let me know if this affects the refinance in my name alone?
- Sharon no longer has permission or authority to speak on my behalf.
- [23] On July 25, 2021, the plaintiff cancelled the refinancing transaction.
- [24] The plaintiff also ended the parties' relationship around this time. They had been together for less than one year.
- [25] On July 26, 2021, the plaintiff sent an email to the defendant discussing the logistics of their separation, including returning the Ford and other assets they had acquired, as well as the need for the defendant to start looking for another place to live. He agreed to let her remain at the Property until she had secured alternative accommodations.
- [26] The defendant says this was a shock to her. She thought they were happy and had just had a good day. Unfortunately, the situation became tense between the parties as they continued to cohabitate, and the plaintiff wished for the defendant to leave.
- [27] The plaintiff testified he consulted a lawyer who advised him to change the locks to the Property the next time the defendant left, to prevent her from being able to re-access the Property. He did so on August 7, 2021, which resulted in a heated confrontation upon the defendant's return. The RCMP were eventually dispatched to the Property, where, upon their arrival, the defendant reported that the plaintiff had threatened her.

- [28] The RCMP advised the plaintiff to leave the Property which he did. The defendant was allowed to remain at the Property. The plaintiff was ultimately charged with uttering threats contrary to s 264.1(1) of the Criminal Code. This charge was stayed by the Provincial Crown in September or October of 2021. The plaintiff maintains that the defendant's allegations were false.
- [29] The parties therefore lived together at the Property for a very short time: from June 29, 2021 until August 7, 2021. After the plaintiff was removed from the Property, the defendant lived there exclusively from August 8, 2021, until this Court ordered the defendant to leave by December 3, 2021.
- [30] At the time of his ouster, most of the plaintiff's possessions remained at the Property with the defendant, including the Ford which the defendant continued to use in his absence. The plaintiff first stayed in motels and then slept in his car. When it became cold, the plaintiff purchased a trailer on September 17, 2021, for \$21,509.95 as a temporary accommodation, with the assistance of a loan from his sister. The plaintiff recently sold the trailer for \$6,300. The plaintiff attributes this significantly reduced amount to the recent economic turmoil created by tariffs and the resulting lack of demand to travel to the USA.
- [31] On September 21, 2021, the plaintiff commenced this action. As noted earlier, on October 12, 2021, the defendant filed a counterclaim seeking damages for deceit, fraud, breach of contract, misrepresentation, unjust enrichment, constructive costs, and other claims. The plaintiff filed an application seeking vacant possession of the Property on October 25, 2021. On November 23, 2021, Lyster J. granted vacant possession of the Property to the plaintiff. In addition, she ordered that the defendant deliver up the Ford by leaving it and the keys in good condition at the Property on or before December 3, 2021.
- [32] Before the interim order took effect however, Shuswap Bailiffs, on behalf of the secured lender, repossessed the Ford. The plaintiff was only refunded \$3,863.30 from his \$20,000 down payment, and thus suffered a loss of \$16,136.70.
- [33] The parties were neither married nor had they cohabitated in a marriage-like relationship for more than two years. The matter therefore does not involve the Family Law Act, S.B.C. 2011, c. 25.

Position of the Parties

- [34] The plaintiff initially sought the following relief against the defendant:
- liquated damages of \$16,136.70 for the loss of the deposit for the Ford;
 - loss of use of the Property from August 8, 2021 to December 3, 2021 (estimated to be approximately \$12,000 on the basis of occupational rent);
 - costs caused by his ouster from the Property, including the loss incurred on the sale of the trailer ($\$21,509.95 - \$6,300 = \$15,209.95$), motels and other expenses;

- d) the sale proceeds of a Nissan Titan (\$8,500);
- e) the cost of the engagement ring (\$6,742.56);
- f) the value of a horse, Doc, paid for by the plaintiff (\$2,000); and
- g) costs to reassert possession of the Property.

[35] At the end of trial however, counsel advised the plaintiff would only seek nominal damages for trespass in the amount of \$2,500 and an order for the return of the engagement ring, or in the alternative, restitution in the amount of \$6,742.56, being the purchase amount the plaintiff paid for the engagement ring.

[36] The defendant filed a counterclaim seeking a remedy in unjust enrichment. She maintains that she contributed to the Property's increase in value, including by adding fences to the acreage, beautifying the Property with plants and décor and paying for the internet and electricity during the relationship. She says these value increases were an enrichment to the plaintiff and a corresponding deprivation to her, for which there is no juristic reason. The defendant therefore says she has an inchoate right to the property by way of a remedial constructive trust, which this Court ought to impose in light of the plaintiff's unjust enrichment, being the increase in the value of the Property. The plaintiff says however on either a value received or a value survived approach, these claims are nominal as the defendant's most significant expenditure was \$13,000 for the installation of a barbed wire fence around the Property.

[37] The defendant filed a second amended counterclaim in which she also maintains that a cause of action in proprietary estoppel applies to the relationship. The defendant says the plaintiff made representations that she would be able to live in the home on the Property for her life, and that she relied on these representations in selling her Ontario home and her previous truck at a loss to hasten their move from Ontario to BC. The defendant says she lost \$85,000 in the sale of her Ontario home, and is without compensation for her efforts and contributions to the Property, and has thereby suffered detriment as a result of her reasonable reliance on the plaintiff's assurances.

[38] The defendant maintains this is a case based on equity and fairness: the plaintiff made promises, the defendant relied on those promises, and those promises were later denied.

[39] The defendant maintains therefore it would be unconscionable, inequitable, and unjust to allow the plaintiff to retain the entirety of the equity in the Property for himself, or in the alternative, not to compensate her for her personal losses from the sale of her Ontario home and her prior truck, which she equates to a loss of her financial security.

[40] In response, the plaintiff maintains that proprietary estoppel cannot be applied because the dealings occurred in the context of their marriage-like relationship, not qua property owners. Regardless of any promises or agreements made between the parties during their relationship, such as the promise to marry, the defendant must establish that the agreement

created an enforceable obligation, which she cannot do as such marital promises are not enforceable. As a result, he says proprietary estoppel is not available to the defendant in these circumstances, and the only analysis this Court can consider is that of unjust enrichment as set out in *Wilson v. Fotsch*, 2010 BCCA 226 [Wilson].

Issues

[41] The central issues in this case are as follows:

- 1) Has the defendant established proprietary estoppel?
- 2) Has the defendant established unjust enrichment?

[42] I turn to the first issue now.

Analysis

- 1) Has the Defendant Established Proprietary Estoppel?

Legal Principles

[43] The defendant relied heavily on the concept of equity and proprietary estoppel in her submissions in the case, which principles she outlined with the assistance of artificial intelligence.

[44] As both parties note, the leading authority on proprietary estoppel is the Supreme Court of Canada's decision in *Cowper-Smith v. Morgan*, 2017 SCC 61 [Cowper-Smith], wherein the Court discussed the requirements of the doctrine as follows:

[15] An equity arises when (1) a representation or assurance is made to the claimant, on the basis of which the claimant expects that he will enjoy some right or benefit over property; (2) the claimant relies on that expectation by doing or refraining from doing something, and his reliance is reasonable in all the circumstances; and (3) the claimant suffers a detriment as a result of his reasonable reliance, such that it would be unfair or unjust for the party responsible for the representation or assurance to go back on her word

[45] The plaintiff points out the counterclaim as pleaded relies on proprietary estoppel and unjust enrichment, as a basis for seeking an interest in the fee simple title of the Property. A claimant who establishes the need for proprietary estoppel is entitled only to the minimum relief necessary to satisfy the equity in their favour. The concept of proprietary estoppel is most often used to establish easements, leases or licenses in regard to land (see e.g., *Zelmer v. Victor Projects Ltd.*, 34 B.C.L.R. (3d) 125, 1997 CanLII 4068 (C.A.)).

[46] Proprietary estoppel has also been used to enforce promises to sell or bequeath land where the promise is premised on a long period of conduct and where a monetary remedy would be insufficient.

- [47] The plaintiff says the use of the doctrine to enforce promises made in contemplation of marriage is unknown in Canadian law, or else is limited to restitution for the return of property given or exchanged as per *Zimmerman v. Lazare*, 2007 BCSC 626 and *Norkum v. Fletcher*, 2017 BCSC 382 at para. 31.
- [48] In this case, the defendant is essentially relying upon the plaintiff's representation and assurances of marriage and a life together. The defendant says she relied upon those expectations and moved to BC with the plaintiff.
- [49] With respect to the three-part test to establish proprietary estoppel, however, the plaintiff says the defendant cannot establish that she has "suffered a detriment, as a result of her reasonable reliance, such that it would be unfair or unjust for the party responsible for the representation to go back on his or her word".
- [50] As noted earlier, the defendant maintains while the parties were together in 2020, they made a mutual decision to move to BC and purchase the Property. The defendant says she relied on those assurances and the parties agreed to purchase the Property together with the defendant's name being on title. She maintains this is not a claim based on emotion but rather on the principles of equity to ensure one party is not allowed to benefit from promises made and later denied.

Application of the Legal Principles

- [51] The defendant's claim for proprietary estoppel is not established in this case.
- [52] Proprietary estoppel requires that the representation at issue involve property, and that the claimant expects to enjoy some right or benefit over that property. As noted in the jurisprudence, the concept of proprietary estoppel is most often used to establish easements, leases, or licenses to land and is premised on a long period of conduct. The defendant seeks none of that. Rather the defendant essentially seeks the enforcement of a promise made in contemplation of marriage - that the parties would buy a property together - to which the concept of propriety estoppel does not apply.
- [53] In her testimony, the defendant stressed her reliance on the promise of marriage and the promise of a long-term life together. When cross-examined, she stated that marriage was not that important to her; rather, their friendship was important and the promises also arose from their friendship.
- [54] This however is not consistent with much of her testimony which repeatedly referenced the promise of marriage and a long-term life together. The defendant relied on the promise to move to BC, buy a house and live their life together, as reflected in her testimony.
- [55] Although I have concluded that proprietary estoppel is not applicable in these circumstances, I find that, even if the doctrine applied, the defendant has failed to satisfy the three requirements under *Cowper-Smith* for the reasons discussed below.

[56] In *Madi v. King*, 2023 ONCA 443 [Madi], the Court pointed out the first stage of the test requires a clear and unambiguous promise: Cowper-Smith at para. 26. The Court noted at para. 28:

I would be cautious about equating the parties' shared understanding or the respondent's expectation that they were buying the house 'together' to a 'clear and unambiguous promise' that the respondent would be treated as a titled owner, and, as such, would share in any post-separation increase in the value of the home

[57] I note first, there is no clear proof of the actual assurances made by the plaintiff about title. The defendant says the plaintiff made repeated and explicit assurances that this was "their home--a shared life and a shared property." She maintains these were clear, specific comments that created a reasonable expectation that the defendant would have a lasting interest in the Property.

[58] As noted in the Madi case, a party's "expectation" that they were buying the house together does not necessarily amount to a "clear and unambiguous promise" that they would be treated as a titled owner.

[59] The defendant did not testify that, in agreeing to move to BC with the plaintiff, she relied specifically on an assurance that she would share title to the Property. Rather she described what can only be characterized at most as a shared understanding they would buy a house and live together.

[60] In this case, the plaintiff did make promises about marriage and living together as reflected by the engagement ring. The defendant relied on that promise and on those expectations by moving to BC with the plaintiff. She did not however rely on a specific clearly expressed promise of sharing title to the Property. Indeed, she knew there was difficulty with her being on title before travelling to BC as the parties were unable to obtain mortgage approval in May 2021 with the defendant on title.

[61] On the second element of the test, the Court in Madi concluded at para. 30:

[t]here is no evidence that the respondent did or refrained from doing anything in reliance on any assurance by the appellant. She said she did not want the obligations associated with a mortgage and she did not assume any. She did not make any contributions to the mortgage or toward any of the expenses associated with the matrimonial home during the marriage or after separation. She did not give any evidence that she refrained from doing anything as a result of her belief that she owned half of the home (emphasis added).

[62] So too in this case. It has not been established that the defendant moved to BC in reliance on the plaintiff's assurance that she would share title to the Property. There is no evidence she moved on the basis of this assurance. Rather the defendant moved and relied on her belief that the couple would have a life together. She moved based on the promise of a life together.

- [63] Finally, on the third element, the Court in Madi pointed out there was:
- [34] no evidence of any detriment suffered by the respondent by reliance on the assurance or expectation that she was an equal owner. She did not contribute either to the mortgage or to the expenses of running the home, nor did she change her position in any other material way
- [35] Here, not only was there no evidence of detrimental reliance, but the respondent received countervailing benefits in the sense applied in the case of *Scholz v. Scholz*, 2013 BCCA 309, 46 B.C.L.R. (5th) 98, at para. 33. Specifically, the appellant allowed her to continue to live in the house without paying rent or contributing to the mortgage for several months after they separated.
- [64] The defendant in this case has not established detriment suffered by not having equal title to the Property. Any detriment suffered was because the plaintiff no longer wished to honour his promise of a life together. The defendant made no financial contributions to the Property, other than some fencing she erected.
- [65] The defendant says however there has been an equity gain of \$120,786 in the Property and she is entitled to half of that being \$60,393.
- [66] The Property has however recently been listed for sale at a price that indicates no real increase in value since it was purchased by the plaintiff. The property was purchased for \$880,000 and originally listed for sale at \$1,000,786. The listing price has since dropped to \$980,000 but it still has not sold. There is therefore no proof of detriment suffered by the defendant with respect to this aspect of the argument in equity.
- [67] The defendant also maintains her detriment is life-altering, including emotional trauma from threats being made to her personal safety, and related ongoing health issues. She maintains the plaintiff acted with intentional hostility with a view to causing her harm. The evidence is completely insufficient to establish these claims and the parties were in the midst of a break-up in which harsh words may have been said, but no threats to the defendant's safety have been established on the evidence.
- [68] The defendant has not returned to Ontario. She has remained in BC, and purchased a house in Nanoose Bay on Vancouver Island, near her adult son. She has achieved this desire and benefit as part of her move to BC. While she paid for fencing of the property at issue along with some of the costs of moving to BC, the plaintiff paid the bulk of the moving costs associated with their respective belongings and the defendant's horses
- [69] In addition, while the defendant made some contributions to the parties' moving expenses, she retained the proceeds from the sale of her own house and retained her horses. While transporting and retaining her horses to BC proved expensive and impacted her ability to purchase her own house on Vancouver Island, this cannot be attributed to any promise of the plaintiff with respect to the Property.

- [70] Ultimately, the defendant did not use or invest any of her home equity or savings into the relationship.
- [71] The doctrine of proprietary estoppel is not meant to provide a windfall to a claimant for the benefits and advantages that may have occurred had the parties married and lived a long life together. The defendant retained her own savings and home equity and ultimately used these for her own purposes. In the circumstances, to conclude the defendant had a proprietary interest in the Property at issue would not be consistent with equity.
- [72] In the Court's view, the concept of unjust enrichment is far more applicable to the circumstances of this case and provides the appropriate framework for analysis.
- [73] I turn to that now.
- 2) Has the Defendant Established Unjust Enrichment?
- [74] As noted by the plaintiff, the relevant analysis for unjust enrichment is set out in Wilson, which confirms "a straightforward economic approach" to analyzing benefits and deprivation within an unmarried relationship. Three questions must be asked:
- a) Has an individual received a benefit or enrichment?
 - b) If so, has there been a corresponding detriment to the claimant?
 - c) Finally, is there an absence of a juristic reason for the enrichment?
- [75] The Court in Wilson clarified the application of unjust enrichment in the context of marriage-like relationships; specifically, how a court is to consider the mutuality that is inherent to such relationships, whereby each person provides spousal services to the other, presumably at their own detriment, and thus giving rise to reciprocal unjust enrichment claims upon the relationship's breakdown.
- [76] At paras. 12 to 20, the Court stated that a court must define the benefit at the outset of the analysis, and if a benefit is found then it is appropriate to proceed to the second stage of the unjust enrichment analysis. If the defendant shows a juristic reason for the enrichment at the third stage of the analysis, there is no unjust enrichment.
- [77] With respect to quantifying an award for unjust enrichment, a value received approach as set out in Wilson at paras. 51-64, may be used in the particular circumstances of this case. The parties have pled reciprocal claims which can be set off against each other as per Wilson at paras. 65-92.

- [78] The plaintiff alleges costs and damages arising from the trespass and occupation of the Property when he was removed from the Property by the defendant. He was then required to arrange alternate accommodations and initiate these proceedings to regain occupation of the Property. Other losses he suffered, he says, included the funds the defendant received from the sale of his Nissan Titan, the sale proceeds she received from the sale of his wife's belongings on Poshmark, and the funds he paid in relation to the defendant's horses.
- [79] In addition, the plaintiff claims the loss of most of his deposit on the Ford. While he said the Ford was intended to be for the defendant, it was purchased at her request and she was to pay for it when her house sold, which she failed to do.
- [80] The plaintiff also points out that the funds the defendant spent on the fence and their moving expenses were very likely derived from the sale of his wife's belongings and funds from the plaintiff as the defendant's financial difficulties were evidenced by the fact the lending institution in May 2021 cast doubt on her ability to meet payments of a mortgage.
- [81] At the outset, I note that other than the payment for some of the fencing and some plants, there is an absence of any evidence of contribution by the defendant to the acquisition, preservation or maintenance of the Property.
- [82] The defendant however claims losses, including from the sale of her Ontario house at a lesser price. In addition, the defendant has set out a long list of claims arising out of her departure from the Property in December 2021, such as amounts she paid to board her horses, veterinary costs, required living expenses including a trailer to live in and a trailer to transport her horses, along with general living costs for the past three years, pad rental for her trailer, and storage costs.
- [83] The defendant is essentially seeking her living costs and expenses for the last three years from the plaintiff by virtue of her move to BC. Other than providing a list of these amounts, she does not set out any evidence or documentation to support these claims. In addition, she claims for furniture that she was unable to remove on her departure from the house in December 2021 and seeks compensation for those items. She has provided no evidence to support these claims and I am therefore unable to weigh or assess their validity.
- [84] With respect to the defendant's claims for a lesser price received for the sale of her Ontario house, the defendant has also not provided any evidence, other than her own surmising, to substantiate this claim. The defendant claims she dropped the price to ensure a sale, paid real estate fees, and lost equity growth for three years. While the defendant provided the listing and ultimate purchase price, she has no documentation or evidence to establish why her house should have been sold at a higher price.

- [85] As the Court of Appeal stated in *Dosanjh v. Liang*, 2015 BCCA 18 at para. 62, unless there is an agreement between the parties, a party bears the onus of producing evidence of property value. There is simply no evidence before this Court that the defendant would have received a higher price for her Ontario property if she had not moved to BC at the time. There is also no evidence before this Court as to the value of her previous truck, which she says she sold at the plaintiff's request and claims for the value of.
- [86] In addition to her claims set out above, the defendant also claims half of what she says is the equity increase in the Property at issue. As noted earlier, the property was purchased for \$880,000 and listed for \$1,000,786 but has not sold. The listing price has dropped to \$980,000 but still has not sold. There is simply no proof of any equity increase in the Property.
- [87] In contrast, the evidence establishes the plaintiff suffered losses as a result of the actions of the defendant, including the loss of the deposit on the Ford, the amount he paid for a trailer to live in while the defendant occupied the Property, and the loss due to the sale of the trailer. All of this has been documented and placed into evidence and establishes the losses claimed as set out earlier.
- [88] While the defendant did provide sufficient evidence of the cost of the fence erected at the Property, and some evidence of the cost of the trip to BC, these costs are far outweighed by the specific documentary evidence provided in this trial of the costs incurred by the plaintiff, as detailed above, as part of the move to BC and as a result of his ouster from the Property between August until December 2021. The plaintiff has therefore not been unjustly enriched by the defendant.
- [89] The plaintiff is seeking damages for trespass against the defendant for the period that she had exclusive occupancy of the Property between August 7, 2021, and December 3, 2021. As described above, the plaintiff was unable to access the Property during this period and was only able to regain possession of the Property upon successfully obtaining an order from this Court.
- [90] The plaintiff argues that a person who is permitted to occupy a property they do not own, without paying rent, as a result of a family arrangement is akin to a licensee of the property, relying on *MacKinnon Estate v. MacKinnon*, 2010 ONCA 170 at paras. 74-75. He says that the defendant's license was terminated on August 7, 2021, which she was aware of, and that her continued occupation of the Property from then until December 3, 2021, was therefore without legal right.
- [91] Despite evidence which supports an award on the basis of both occupational rent and actual losses sustained, the plaintiff only seeks nominal damages for the defendant's trespass in the amount of \$2,500.

Conclusion

- [92] This short relationship is over. Both these parties suffered adverse consequences. It is time for these parties to put these matters behind them.
- [93] Consistent with this sentiment, despite the losses claimed and as set out above, the plaintiff seeks only minimal damages in trespass against the defendant in the amount of \$2,500 and the return of the engagement ring or judgement against the defendant in the amount of \$6,742.56 as restitution for the engagement ring. The plaintiff also seeks that all claims based on proprietary estoppel and unjust enrichment be dismissed, along with all claims related to chattels, with the party being entitled to own the chattels they currently possess, free from all claims by the other party. In addition, the plaintiff asks that the certificate of pending litigation registered against the Property be cancelled along with all claims by which the defendant seeks an ownership interest in the Property.
- [94] I grant the orders requested above, except for any orders with respect to the engagement ring. The location of that ring is at issue. It has not been definitively established that the engagement ring remains in the possession of the defendant. While the plaintiff indicated it was on his bedside table when he was removed from the Property and no longer there when he returned, the Court is not able to order the defendant return an item that may not be in her possession. Accordingly, I decline to do so.
- [95] This matter has been difficult for both parties. I appreciate this is especially so for the defendant, who says she was taken by surprise by the end of the relationship. I note also she is a self-represented litigant who has been unable to establish her claims, despite her best efforts. While I acknowledge the difficulties faced by self-represented litigants, the evidentiary standards of proof still apply to such parties.
- [96] The defendant's counterclaims are dismissed. The plaintiff's claim for damages for trespass is granted on the basis set out above. The plaintiff's claim with respect to the engagement ring is dismissed. The certificate of pending litigation on the Property is to be cancelled and other orders as delineated above are granted.
- [97] The parties have leave to deal with costs by filing an application within 60 days of this judgment.
- [98] As requested, plaintiff's counsel may draft the order. The requirement for the signature of the defendant is waived.

"Burke J."

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