

CANADA / JUDGMENT

Grenier v. Williams

2020 BCSC 462

COURT

Supreme Court of British Columbia

DECIDED

30 March 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 462 Grenier v. Williams

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Grenier v. Williams,

2020 BCSC 462

Date: 20200330

Docket: S202044

Registry: New Westminster

Between:

Stacey Ellen Grenier

Plaintiff

And

Stanley Norman Williams

Defendant

Before: The Honourable Mr. Justice Schultes

Reasons for Judgment

The Plaintiff, appearing in person:

S. Grenier

The Defendant, appearing in person:

S. Williams

Place and Date of Trial:

New Westminster, B.C.

February 25 - March 1, 2019

Place and Date of Judgment:

New Westminster, B.C.

March 30, 2020

Introduction

- [1] This trial dealt with the \$23,000 that Stacey Grenier provided to her father Stanley Williams in April 2014, for the down payment on a property he was attempting to purchase. The outcome of her claim turns on the correct characterization of this transaction.
- [2] Ms. Grenier says that this transaction was a loan that was to be repaid with interest after Mr. Williams had renovated the property and sold it for a profit. Mr. Williams maintains that it was actually a gift, which he intended to return at some later date, along with an additional amount as "a benefit". He also says that he returned \$3000 of the money shortly after receiving it, at her request.
- [3] Mr. Williams also has a counterclaim against Ms. Grenier's husband, Murray Grenier, for an incident that arose from his frustration with Mr. Williams's failure to repay the money. Mr. Williams alleges that on March 8, 2018, Mr. Grenier forced his way into his home, pushed him and uttered threats towards him.

Evidence

Background

- [4] Ms. Grenier is Mr. Williams's daughter from his first marriage. He later remarried and was living in Ontario before these events unfolded. After his separation from her mother Ms. Grenier had quite limited contact with him, although their relationship was a positive one.
- [5] The Greniers were formerly the owners of a townhouse in Surrey, where they lived with their two young children. Financial misfortune befell them when they were defrauded of the \$100,000 that they had invested in a real estate scheme. As a result of this fraud, they were unable to continue making their mortgage payments and had to abandon their home to foreclosure.

- [6] Meanwhile, after separating from his wife, Mr. Williams decided to move out to B.C. His long-term goal was to end up living on Vancouver Island or the Gulf Islands. He was accompanied by his adult son Keith Williams, Ms. Grenier's brother, who is also a child of his first marriage. (His son prefers to be referred to as "Kallen", and I will refer to him by that first name only to distinguish him from his father.) Kallen testified that he came out with his farther to support him.
- [7] He and Kallen arrived in July 2013. By that point, the Greniers had moved out of their home and found a more affordable situation in a co-op. They allowed Mr. Williams and Kallen to move into their vacant home.
- [8] There was some initial discussion about Mr. Williams renting the property in order to delay the foreclosure, and he actually had himself added as a party to the foreclosure petition for that purpose. After determining that such an approach would be fruitless, he turned his efforts to assuming responsibility for the mortgages and taking over the property, again with the Greniers' consent and cooperation.
- [9] In order to facilitate his assumption of the mortgages, the Greniers entered into an "Agreement and Understanding" with Mr. Williams, which was drawn up by a notary. It provided that:
- no money was changing hands;
 - Mr. Williams was in effect assuming the mortgages (although the mortgage products that were then in place were no longer being offered, so he actually had to qualify for a new mortgage with the lender); and
 - the "purchase price" was being inflated to \$314,000 so that the new mortgage would "fit into the new funding guidelines and practices".
- [10] The Greniers also provided a "Down Payment Gift Letter" in which they purported to give Mr. Williams \$63,301.44. I infer that this was their equity in the property at the time. Mr. Williams had told them that the banks needed a 20% down payment. Ms. Grenier testified that they were trying to help Mr. Williams carry out the purchase, that he brought them the form to sign, and that they completed it because they "didn't know any better".
- [11] This attempt by Mr. Williams also did not succeed.
- [12] Mr. Williams then applied to buy the property when it was sold in the foreclosure process. He was ultimately the successful bidder in the court sale. His offer of \$218,000 was accepted and the contract of purchase and sale was concluded on March 31, 2014. The offer was subject to Mr. Williams arranging suitable financing, and the deadline for removing the financing clause was April 14. This was the period during which the \$23,000 was provided by Ms. Grenier.

- [13] There are two other important background facts to the transaction. The first is that Ms. Grenier and her husband both declared personal bankruptcy as a result of the effects of the fraud on their financial situation. Mr. Grenier made his application in October 2013 and Ms. Grenier did so in August 2014.
- [14] The second is that in December 2013, Ms. Grenier received a settlement of her motor vehicle personal injury claim of \$29,662.81. She testified that it was entirely for pain and suffering and that at some point after receiving it, she sought legal advice and was told that it was exempt from bankruptcy. She added that the bankruptcy trustee was also aware of it. The money that she provided to Mr. Williams came from that settlement.

The Transaction

The Greniers

- [15] Ms. Grenier testified that one day early in April of 2014 Mr. Williams arrived unannounced at her home - his usual practice was to call ahead. He told her that he had made a successful bid for the house but was short for the down payment. He asked if he could borrow her settlement money. She told him that she only had \$23,000 left. Mr. Williams said that he could "make that work".
- [16] He said he was going to renovate the property, "flip it" (that is, sell it at a profit) and move to Vancouver Island, where he dreamed of owning a home.
- [17] Ms. Grenier explained that she trusted her father and wanted to help him out. She thought a 10% return rate on the loan was fair, so she "said 10% and left it at that." She believed that he was more knowledgeable about financial matters than she was.
- [18] In cross-examination she agreed that there is a difference between 10% interest and a 10% return, as well as between a loan and a "gift with benefit". However, she denied the suggestion that this money was a gift and that Mr. Williams's intention was to give it back later. She explained that she and her husband were in no position to be making gifts at that point - they had young children, were living in low-income housing and (in her case) facing bankruptcy.
- [19] The term was to be for one year because Mr. Williams expected to get the work on the house done in that time.
- [20] Mr. Williams said that there did not need to be any documentation. She had asked him for it, but accepted his response.
- [21] Mr. Grenier was in the family room of their home with their children while she and her father were speaking. He said that he had "heard everything" (of her conversation with Mr. Williams), that they "did not need the money right now" and that "a year is good".

- [22] Mr. Grenier testified to a more detailed version of this conversation, which had begun with Ms. Grenier asking, "Dad, what are you doing here?" On the duration of the loan, he quoted Mr. Williams as saying "I think I can renovate in about a year, flip for a nice profit and continue on to the Island." His recollection of the discussion about interest involved Ms. Grenier asking, "Can I get 10%?" to which Mr. Williams replied, "There should be plenty of profit for that."
- [23] On the nature of the transaction, Mr. Grenier said that he would not have allowed his wife to provide the money if it had been a gift. He and Ms. Grenier both denied the suggestion that they only began suggesting that it was a loan after they had consulted a lawyer about recovering the money.
- [24] Mr. Grenier was challenged in cross-examination on his ability to have heard this conversation from his location, which he later determined was just over eight metres from the door into the kitchen through which Mr. Williams had entered the home. His location is also "half a floor" down some stairs from the kitchen/dining room area and is reached via a "single-width hallway". Mr. Grenier agreed that the children can be noisy and energetic and said that he believed that the TV was on at the time. He maintained that despite these factors, as well as the fact that Mr. Williams has a quiet voice, he was still able to hear "everything".
- [25] In re-examination he clarified that he did not remember whether the TV was on or not, and that in any case the children are quiet when watching it. He also related an anecdote about having been able to hear the conversation of a "quieter and more subdued person" who was at that door in similar circumstances.
- [26] Ms. Grenier explained that pursuant to this agreement she withdrew the \$5000 that she immediately had available and gave it to Mr. Williams, and later provided him with two additional amounts of \$9000.

Mr. Williams

- [27] As an introduction to his version of events, Mr. Williams said that all of the financial details had to be in place before he could attempt to purchase the home through the foreclosure process. This included "how the money is presented [and] where it comes from", so the judge could determine which purchase bid should be selected.
- [28] According to him, "slightly prior to March 30" he advised Ms. Grenier that he was making a bid, and she suggested that he use part of her personal injury settlement for it. He would not simply have shown up at her front door and asked for money as she alleged - there "would have been" a previous indication from her to come and discuss it. He agreed to meet, and after hearing her proposal and "doing a mental analysis" of what was being proposed, he accepted the money. This conversation between them took place at the dining room table of her home (Mr. Grenier said that the dining room was five to six metres from the sofa where he was).

- [29] While he did not need the money to carry out the purchase, he thought that "as a gift to be repaid at some future date with a bonus, it made sense", so he accepted what he described as "a family gift process". He also said that it "seemed beneficial to both parties". He had options as to how to provide the down payment, and having these funds from Ms. Grenier would free up some of his own money and make the purchase of appliances and the completion of the renovations much easier. His plan at that point was indeed to renovate and get out of Surrey (which he said was "not my favourite place"), as Ms. Grenier had described.
- [30] This agreement was predicated on his hope that the renovation would "free things up" and allow the money to be returned. He emphasized though, that he would not have committed to returning the money at a specific time. He knows from his many years of business experience not to make "positive assertive statements" in such situations and has been trained instead to use "weasel words" when dealing with customers. Consequently, he would have used phrases like "my plan/hope is" or "unless things change" when expressing his intentions for repayment.
- [31] He maintained that at the time of the transaction and repeatedly afterwards, he told Ms. Grenier that this "could not be" a loan. He testified to several reasons for that position. His reading of a clause in the foreclosure petition was that the Greniers were forbidden from being on title (which I gather he believed would be violated if he received a loan from them for the purchase). More importantly, he knew from his dealings with the real estate agent and mortgage broker that a down payment cannot originate from a loan - if he received funds from another source to form the down payment it had to be by a gift. As a result, the lawyers involved in the foreclosure would not have allowed his purchase of the home with a loan. Finally, he said that he would have ended up paying more in interest if he borrowed the money at a rate of 10% than if he simply purchased the home with a down payment of \$23,000 less, so there was no practical incentive for him to borrow it.
- [32] Mr. Williams testified that the gift carried an obligation that it would be returned "with benefit". Although he had only a faint recollection of who had said what in the conversation, the net of it was that Ms. Grenier said that "it would be nice/I expect" that it would be returned at some point in the future. Addressing Ms. Grenier's evidence that a 10% return was agreed to, Mr. Williams said that "it could be something in that order", but stressed that because it was not a loan there was no repayment schedule or interest rate attached to it. Rather, it was a case of Ms. Grenier saying that it would be good if she could receive "something in addition" and Mr. Williams agreeing that it "made sense".
- [33] According to him, Ms. Grenier insisted that the money she provided be in cash and in small amounts. His interest was piqued because she appeared to be uncomfortable handing these "packets of cash". Like Ms. Grenier, he said that he received \$5000 initially. He recalled the further two payments being provided on April 1 and 12. Contrary to her evidence, he said that she was the one who did not want any documentation of the transaction.

- [34] He added that Ms. Grenier later contacted him and said that she needed \$3000 back, which he returned, leaving the amount of the gift from her at \$20,000. He thought that he would be able to provide a receipt showing his withdrawal of the \$3000 to support this evidence, but ultimately had to base his assertion of the partial return only on his oral testimony. (The Greniers both testified that they have no recollection of any of the money being returned.)

The purchase

- [35] According to Mr. Williams, the most straightforward way of providing the money would have been for Ms. Grenier to sign a gift letter in a form provided by the mortgage company (of the kind the Greniers had completed in relation to his attempts to assume the mortgages). However, she refused to do so. This required him to arrange the gifts to come from Kallen and from his stepdaughter Anne Watson, who lives in Ontario. This did not involve any actual transfer of funds to them and back to him. Instead it was carried out by his nominal "gifting" of the amounts to them, and their completion of letters "re-gifting" them back to him for the purchase. These letters, titled "Gift Verification Form" were pre-printed forms with the heading "Dominion Macklem Mortgages", which I infer was the mortgage broker involved.
- [36] Kallen completed two such letters, for \$5,000 and \$9,000 respectively, on April 12. Ms. Watson completed two in the same amounts on April 14. Mr. Williams explained that the \$5000 letter from her represented an actual repayment, for what I infer was a previous loan from him, following the sale of her husband's truck.
- [37] Kallen confirmed in his evidence that the money was "verbally gifted" to him and then he "re-gifted" it to his father. The funds were never in his possession and his understanding of his involvement was that it was to "assist both parties", not for him to hang onto them. He believed that this was pursuant to a family agreement, and that the gifting was done to protect Ms. Grenier and assist their father with the mortgage requirement of the purchase. But he qualified his further evidence that the funds were "gifted to be returned at some later date" as being "generally my understanding". Similarly, his evidence that Ms. Grenier had put her settlement funds aside so that they were not traceable in her bankruptcy as "my assumption [and] who made these decisions I am not privy to".
- [38] Ms. Grenier said she did not loan any of the money she provided to Mr. Williams to her brother or stepsister, nor did she discuss any of her arrangements with Mr. Williams with them.

Requests for repayment

Ms. Grenier's efforts

- [39] Ms. Grenier said that over the following year she saw her father about every three weeks. It was their habit to go on shopping trips together to the U.S. He also showed her the various renovations that he was performing at the home.
- [40] According to her, by April 15 of 2015 the renovations to the upstairs of the home were "pretty much done". At that point, Mr. Williams told her that he needed another year to complete all of them. She talked to her husband and his response was that this was fine, as long as they got their money back (eventually, I took it).
- [41] As a result, she and Mr. Williams came to a new agreement, to extend the term of the loan. He would continue to renovate, hoping to complete that process the following year. Although she told Mr. Williams that it would be for "a year's time", she also told him that she would give him "lots of notice" of when they actually needed the money, which she eventually clarified would be six months' notice.
- [42] As it turned out, they actually gave Mr. Williams "notice of notice" - in the summer of 2016 they told him that on January 1, 2017 they would be giving him six months' notice to repay the money. As they had indicated, they gave him the notice on that date. From then until the deadline of June 1 Ms. Grenier reminded him of it monthly. He said that it would be no problem and that he would have the money.
- [43] When she asked him for the money on June 1, he said that he had procrastinated and not done anything. He would now "get on it." When she called a week later, he said that he was trying to obtain financing (to repay them) but that it was not working out. He did not reply to her email at the end of that month, nor to a follow-up one from Mr. Grenier on July 11, in which he told Mr. Williams to sell the house if he could not get the money back otherwise.
- [44] Under pressure from her husband, Ms. Grenier began to call her father monthly. She said that his excuses began to follow a familiar pattern - he was working on it, was trying to free up some money and was working on an invention (his background is as a computer programmer).
- [45] Mr. Grenier agreed that he also sent a series of text messages to Mr. Williams that were angry in their tone and demanded that he sell the house to repay the debt.
- [46] In March of 2018 they consulted a lawyer and issued a formal demand letter to Mr. Williams for repayment. The deadline for his response was April 8. On that date he phoned Ms. Grenier. Unknown to him, she recorded the call. The recording, and a transcript of the parts of it that dealt with the issues in this case, was part of the evidence.
- [47] During the call Mr. Williams repeatedly advised that he was not disputing that the money had come from Ms. Grenier. He did dispute the specific amount being demanded by them, because she had asked for some of it back and he had given it to her, as I have previously summarized.

- [48] He also did not dispute the notice they had provided for repayment or that he had left it to the last minute to deal with the issue. He explained that he was trying his best, was attempting to free up some equity in the property short of selling it but was not able to give her back that amount "at the moment". He said that if he were able to free up equity "I'd have no problem, and I'll use the term 'gifting' it to you." He referred to having six months of documentation of those efforts. Nevertheless, he emphasized that he was not going to move.
- [49] More ominously, he referred to the fact that he was "not going to lie under oath" and that gifting the money to him just prior to going into bankruptcy was a criminal offence for which she could go to jail. In response to her protestations that it was not a gift and if that was what he had wanted she would have kept the money, he explained that "it can't be a loan" because then she would have to explain why she was hiding the money from bankruptcy. On this issue of characterizing the transaction, the transcript reads:

Stan: The main matter is I recognize that that money came in, and I recognize that--and I have to phrase this carefully because, I mean, I think you understand why the phrasing--that it might be reasonable for you to expect--and I'll use the word gift to assist you and your family at some future time. I'm very carefully avoiding anything that incurs a loan. So I'm not disputing that--

Stacey: that you took my money.

Stan: I'm not disputing that the money came from you, and it--

Stacey: Over \$20,000 came from me.

Stan: Yeah. Yes. Yes. Yes. I'm not trying to dispute that. I'm trying--

Stacey: I don't have the money -

Stan: I'm trying my best--

Stacey: That I could give that type of money--

Stan: Okay.

Stacey: --away and not get it back.

[Transcript p. 3, l.5 - p.4, l.3]

- [50] He told her to be careful what she said and that "especially if it goes into open court, you are pleading guilty to hiding money from your bankruptcy " He also said that she could "look at it as subtly or aggressively as you wish" and that "it could be exceptionally painful". He was "carefully choosing words here, but I couldn't choose those words that carefully if it were an affidavit or a court appearance, because that would be perjury, and I'm not going to open myself up to perjury." In response to Ms. Grenier's assertion that "when I lent you the money" she was under the impression that he was going renovate the home, sell it and move, he clarified that "it would be sometime after your bankruptcy was cleared that this could come back to you because there would be a problem if it came back before."

- [51] He explained that he preferred to speak to her one on one about the matter and that he was not going to send any "traceable letters or emails talking about this at all". He added that he was so disturbed by these "happenings" (by which I took him to mean the demand letter and Mr. Grenier's texts) that he was looking at changing his will to modify "the way the funds will be returned to you and the kids". Earlier he had said that he had no problem re-gifting the money "to help the kids get an education", and that he was using the word "gift" to "assist you and your family at a future time". (Ms. Grenier testified that she had never discussed receiving the money back from Mr. Williams in any other form than simple repayment.)
- [52] The Greniers did not have the entire conversation transcribed, but I have listened to the recording of the balance of it and, as she and Mr. Williams described in their evidence, it did not contain any further discussions about the loan/gift issue. Instead, they discussed a potential shopping trip to the U.S. in a few days. The only relevant aspect of it was that Mr. Williams mentioned his restricted financial circumstances, in the context of the availability of cheaper groceries down there.
- [53] Because there was no repayment in response to the demand letter, Ms. Grenier began this action in May of 2018.

Mr. Williams's position

- [54] He said that his intention to eventually sell and move to the Gulf Islands remained in place until a year after the purchase, when he began to research available properties there. To his dismay, he found that no bank would give a mortgage on such a property - it had to be 100% cash, with the possibility of a "takeback" mortgage by the seller.
- [55] His equity in the Surrey property was not enough to permit him to move, either then or in the near future.
- [56] He then lost his long-term employment, putting his "cashflow in the negative", and requiring him to revert to "starving artist mode". He testified that he makes his mortgage payment of \$1000 per month out of a total monthly income of \$1700. Any increase in this income is dependent on his ability to complete the development of some software that he had previously patented, which he hopes to take to the point that it can be his "retirement plan". At the time that he testified, he also had a bid pending to supply software to a federal agency.
- [57] In view of his economic situation and the rising value of his home (the most recent assessment as of the trial dates put it over \$500,000), he decided to stay in Surrey.
- [58] Using the equity on the home to repay Ms. Grenier proved to be impossible, he explained, because financial institutions would not give full effect to the federal program that provides for home equity lines of credit. Instead they also require the borrower to have an income of at least \$40,000 per year, which is beyond his capacity. The alternative of a reverse mortgage (a product offered to make funds available to seniors who have equity in their homes but limited income) would drive him to bankruptcy in three or four years, in his view, because it

would require him to replace his current mortgage, which has a very favourable rate, with a mortgage with a much higher one, in order to fund a line of credit with a rate that was even higher than that.

- [59] Simply selling his property to repay Ms. Grenier would leave him homeless, since he would not qualify for another mortgage on a new property.
- [60] He said that he explained to Ms. Grenier many times that he could not return the gift. He agreed that when she called he would say that he was working on a solution. Although most of his interactions with banks and mortgage companies were in person, he would have provided her with documentation of his refinancing efforts, as he mentioned in the recorded call, if she had asked him.
- [61] As part of his explanation of the true nature of transaction, he emphasized what he considered to be misleading and suspicious actions by the Greniers throughout his dealings with their former home.
- [62] When he found out, at the time he was trying to assume the mortgage (which he claimed he was doing to try to assist them out of their financial problems), that more was owing on the property than its assessed value, he was concerned that they had been prepared to let him put himself in that situation without telling him. They also did not tell him when Mr. Grenier went into bankruptcy, raising the further concern that Mr. Grenier could simply have assumed that mortgage debt as part of his bankruptcy process. The demand letter and the court action made him particularly angry about this behaviour.
- [63] Both Ms. Grenier and her husband denied Mr. Williams's suggestions in cross-examination that they had knowingly allowed him to try to assume the mortgage in those circumstances. Ms. Grenier did not know the amount of debt that he would be assuming, or the value of the property at that point. Mr. Grenier said he was aware that the house was worth less than the mortgage, although not the specific amount less, but that it did not matter to them because they were walking away from the property. Mr. Williams "appeared to have some knowledge", he said, by which I took him to mean knowledge of the obligation he would be assuming. He did not know if assuming the mortgage was a good deal for Mr. Williams or not, but he assumed that Mr. Williams was competent and saw no reason to question him. As to the effect of his bankruptcy on his mortgage obligations, he said that it was all part of his bankruptcy and that he still owed for the mortgage at the time he went bankrupt.
- [64] As shown by his comments during the recorded call, Mr. Williams said that after he learned of Ms. Grenier's bankruptcy he became concerned that the gift was an attempt by her to hide the settlement from the bankruptcy process. This concern was aggravated by her insistence on providing it to him in several cash installments, each below the amounts that banks are required to report as suspicious, and her unwillingness to provide documentation of the gift.

- [65] Overall, the court action has changed Mr. Williams's view of the Greniers and their financial competence. As he put it, "Being thrown into court has modified my view and my intent". If he is able to return the gift, he would rather see it placed in trust for their children's education, as he described in the recorded call.

The incident on March 8, 2018 and the threatening text messages

- [66] Mr. Williams based his description of the confrontation with Mr. Grenier on a memo that he wrote shortly after it occurred. He described Mr. Grenier coming to his home at 10:00 am that day and pounding on the door. Mr. Williams and Kallen, who had been woken up by the pounding, did not know at first where it was coming from. Mr. Grenier pounded on the door again and then, despite being told to stay outside, pushed his way in. He refused to leave when requested, pushed Mr. Williams and "threatened personal harm" to him. He made a further threat and then left, kicking Mr. Williams's car in the carport on the way out.
- [67] In his evidence, Kallen described the incident in the same way. (He had signed a copy of Mr. Williams's memo to attest that it accurately described what had occurred.) His observation was that Mr. Grenier stormed out after realizing that these "aggressive actions were not achieving positive results". He added that Mr. Grenier had used words to the effect of, "You better pay me back" during the confrontation. Despite this, when he was asked in cross-examination whether Mr. Grenier could have said, "You better call Stacey [that is, Ms. Grenier]", he acknowledged that he was "pretty sure you could have said that, yes."
- [68] Mr. Williams included a text message from Mr. Grenier in his trial documents as an example of the threatening ones he received. This one was sent on April 6, 2018. In it, Mr. Grenier referred to Mr. Williams having previously threatened Ms. Grenier in some manner (perhaps his implication of criminal conduct relating to the bankruptcy in the recorded call); having consulted a lawyer; and having refused the option of a second mortgage to facilitate repayment (an option that had been suggested in their demand letter). He offered Mr. Williams the choice between selling the house and walking away "with a great profit", or the Greniers having the court sell it.
- [69] The angry and arguably abusive aspects of the text involved Mr. Grenier referring to Mr. Williams as "Big Man" in relation to the threat to Ms. Grenier, saying that Mr. Williams had not proven that he is anything other than "a scam artist", and concluding with, "I'm going to love it when the [bailiff] throws you out on the street".
- [70] Mr. Grenier testified that Mr. Williams's account of the incident is "generally correct". The paragraph in the counterclaim that alleges that he "did legally enter and assault" Mr. Williams is "a bit overstated", but he otherwise agreed with it. He denied ever sending threatening messages by text. In his messages, he was basically encouraging Mr. Williams to sell the house and repay them (in one message that was included in the plaintiff's documents, he implored Mr. Williams to "get off your ass and get it done").

Discussion

Non-essential matters

- [71] The parties spent quite a bit of time during the trial disagreeing about procedural issues that arose after the action was filed, such as when proper document disclosure was made by Mr. Williams, whether certain documents were actually received by the Greniers, and what was said at the trial management conference. In addition, the Greniers sought to provide evidence of the costs that they have incurred in prosecuting the action. Because none of these matters affects the merits of the case or offers any basis on which to assess the parties' credibility, I do not intend to address them.
- [72] Second, while the parties prepared and presented their respective cases very capably, there were still some challenges, of the kind that inevitably arise when intelligent but non-legally trained people are required to conduct litigation on their own. The notice of civil claim does not seek the usual remedies flowing from the breach of contract alleged against Mr. Williams and the counterclaim does not describe the legal basis of Mr. Grenier's alleged wrongdoing at all. The counterclaim is directed to Mr. Grenier, who was not a party to the notice of civil claim, but he nevertheless filed a response to the counterclaim on his own behalf, apparently following legal advice. And some of the actions by Ms. Grenier during the transaction in issue that Mr. Williams testified about, such as her refusal to complete a gift letter and her insistence that the money be provided in cash and in smaller amounts, were not put to her in cross-examination for her to respond to, as required by the so-called rule in *Browne v. Dunn* (1893), 6 R. 87 (H.L. (Eng.)).
- [73] Despite this, at the end of the day I am satisfied that the parties have fully addressed the essential questions in this case - the nature of the agreement between Ms. Grenier and Mr. Williams and Mr. Grenier's actions on March 8 - with all of their available relevant evidence, and have had a fair opportunity to respond to the other party's position. Therefore, because no one has been prejudiced by them, I intend to treat these challenges as purely technical in nature, and having no bearing on the merits.

Legal principles

- [74] What Ms. Grenier is alleging, in essence, is a breach of an agreement by Mr. Williams. If her version of events is accepted, all of the essential elements of a contract - offer, acceptance, consideration, certainty of terms - were present when the money was provided, and it is common ground that he has not repaid it. The requirements of such a contract in the specific context of a loan agreement were summarized in *Jacobs v. Yehia*, 2014 BCSC 845, rev'd on other grounds 2016 BCCA 38:

253 A loan is a specific form of contract. As such, it requires mutual concordance between the parties as to the existence, nature and scope of their respective rights and duties. Like other contracts, it may be evidenced orally, in writing, by conduct or by a combination thereof: *Biehl v. Strang*, 2011 BCSC 1373, paras. 326-330; *Le Soleil [Hotel & Suites Ltd. v. Le Soleil Management Inc.]*, 2009 BCSC 1303], para. 323.

254 The essential elements of a loan were discussed by Satanove J. in *Lee v. 1137434 Alberta Ltd.*, 2009 BCSC 284. As she noted, they have been described as: i) a principal sum; ii) placed with a borrower; iii) on agreed terms for the payment of interest; and iv) liability on the borrower's part for return of the principal with accrued interest. A loan has also been defined as delivery by one party and receipt by another of money on agreement, express or implied, to repay the money with or without interest: *Lee*, paras 9-10.

[75] In contrast, the elements of a gift, which Mr. Williams maintains is what was provided here, were described in *McNamee v. McNamee*, 106 O.R. (3d) 401 (C.A.):

[23] [A] gift, generally speaking, is a voluntary transfer of property to another without consideration: *Black's Law Dictionary*, 7th ed. (St. Paul, MN: West Group, 1999), at p. 696; *Birce v. Birce* (2001), 56 O.R. (3d) 226, [2001] O.J. No. 3910 (C.A.), at para. 17. A transfer of property by contractual agreement involves a mutual exchange of obligations ("consideration"), but a transfer by way of gift involves a gratuitous, unilateral transaction: *Mary Jane Mossman and William Flanagan, Property Law: Cases and Commentary*, 2nd ed. (Toronto: Emond Montgomery Publications, 2004), at p. 439. As *McLachlin J.* observed in *Peter v. Beblow*, [1993] 1 S.C.R. 980, [1993] S.C.J. No. 36, at p. 991-92 S.C.R., "[t]he central element of a gift [is the] intentional giving to another without expectation of remuneration".

[24] The essential ingredients of a legally valid gift are not in dispute. There must be (1) an intention to make a gift on the part of the donor, without consideration or expectation of remuneration, (2) an acceptance of the gift by the donee and (3) a sufficient act of delivery or transfer of the property to complete the transaction: *Cochrane v. Moore* (1890), 25 Q.B.D. 57 (C.A.), at pp. 72-73 Q.B.D.; *Mossman and Flanagan*, *supra*, at p. 441, *Bruce Ziff, Principles of Property Law*, 5th ed. (Toronto: Carswell, 2010), at p. 157.

[76] A further helpful explanation is found in *Read v. Rayner*, [1943] 2 D.L.R. 225 at 231 (P.E.I.S.C.), *aff'd* [1943] 4 D.L.R. 803 (S.C.C.):

15 What is a gift?

16 Britton, in his treatise on Gifts (Lib. 11. C3) gives the following definition:

"A gift is an act whereby anything is voluntarily transferred from the true possessor to another person, with the full intention that the thing shall not return to the donor, and with the full intention on the part of the receiver to retain the thing entirely as his own without restoring it to the giver. For the gift cannot be properly made if the thing given does not so belong to the receiver, that the two rights of property and of possession, are united in his person, so that the gift cannot be revoked by the donor, or made void by another, in whom the lawful property is

vested."

17 Blackstone [Book II, c. 30, p. 441] says: "A true and proper gift or grant is always accompanied with delivery of possession, and takes effect immediately."

18 In the leading case of *Cochrane v. Moore* (1890), 25 Q.B.D. 57 at p. 76, Lord Esher M.R. gives the definition of a gift as follows:

"It is a transaction consisting of two contemporaneous acts, which at once complete the transaction, so that there is nothing more to be done by either party. The act done by one is that he gives; the act done by the other is that he accepts. These, contemporaneous acts being done, neither party has anything more to do."

[77] To the extent that it assists in assessing the credibility of Ms. Grenier's claim to have received legal advice that she did not have to include her personal injury settlement in her bankruptcy, and of Mr. Williams's theory that the gift was intended to hide the funds, it should be noted that awards representing compensation for pain and suffering are indeed exempt: *Re Hollister* (1926), 7 C.B.R. 629 (Ont. S.C.). More recently, a registrar in bankruptcy in this province has held that this exemption extends to compensation for income loss: *Kuta (Re)*, 2014 BCSC 2252.

[78] The legal bases of Mr. Williams's counterclaim against Mr. Grenier are the torts of assault and battery. Both of these civil wrongs involve intentional conduct by the defendant that interferes with the person of the plaintiff. As they were explained in *Allen Linden and Bruce Feldthusen*, *Canadian Tort Law*, 10th ed. (Toronto: LexisNexis, 2015) at paras. 2.32 and 2.42:

Assault is the intentional creation of the apprehension of imminent harmful or offensive contact [It] furnishes protection for the interest in freedom from fear of being physically interfered with.

A person who proves that the defendant made direct physical contact with [their] person makes [their] case for battery [It] protects the integrity of one's person and does not require proof of further injury.

Credibility, findings of fact and conclusions

[79] Ms. Grenier gave her evidence in an open, straightforward and guileless manner. She was plainly deeply uncomfortable to be testifying against her father, and her underlying state of mind seemed to be dismay at the situation, rather than anger or vindictiveness towards him. Her description of her discussions with him in relation to the transaction sounded like a natural and unforced recounting of actual human interactions, including his procrastination and litany of excuses when she and her husband pursued the repayment.

[80] The fact that the law actually does exempt settlements of the kind that she received from bankruptcy offers circumstantial support for her claim to have obtained legal advice to that effect before deciding not to declare it. I also find it significant, when considering whose version is more likely to be true, that she supplied the money at a point that had no apparent

significance to her situation, either with respect to the settlement, which she had received the preceding December, or her bankruptcy, which did not take place until August. In contrast, that period was of critical significance to Mr. Williams's ability to put together a down payment for the home.

- [81] Mr. Grenier's overt hostility towards Mr. Williams, both throughout the history of the case and in his testimony, requires me to consider his evidence more cautiously. However, while Mr. Williams's arguments about the unlikelihood of being able to pick up his softly-spoken words at the distance involved here deserve consideration, and while it seems unlikely that Mr. Grenier would have been in a position to take in the complete verbatim conversation that he recounted in his testimony, I am nevertheless satisfied that he did become aware in some manner of Mr. Williams's request to borrow money for the down payment at the time it was made (especially given Mr. Williams's evidence that the conversation took place at the much closer dining room table), and that he gave his approval of it immediately afterwards. This is circumstantial evidence tending to rebut the allegation that a loan was only alleged after a lawyer became involved.
- [82] Mr. Williams was an intelligent and articulate witness, and I noted his efforts to describe the relevant events and their context in as precise a manner as possible. Nevertheless, I conclude that, through some combination of anger at having been brought into the lawsuit, a sense of betrayal at the Greniers' lack of candour about their financial situation, and concern about his potential financial vulnerability, he has conflated the nature of the transaction with Ms. Grenier with the sham gifting process that accompanied his mortgage application for the purchase.
- [83] Significantly in that regard, in his evidence he emphasized his position that this "could not be a loan", which he related to the mortgage requirements precluding loaned funds as part of a down payment, and the potential legal consequences of loaning out funds when contemplating bankruptcy proceedings. Compared to his reliance on these situational influences to suggest what must have occurred, his evidence of what actually did occur between him and Ms. Grenier was vague and did not make sense.
- [84] He described a completely passive and unquestioning role for himself when accepting the offer - indifferent as to whether he received the funds or not, but certainly glad to have them - that I find unrealistic in light of his description of his overall financial situation. Further, his evidence was that he did not find out about Ms. Grenier's contemplated bankruptcy until later and so it is just not believable that he would have accepted a motiveless gift of this magnitude, accompanied by only the vaguest indications of a reciprocal obligation, without inquiring further. And, as I have said, in itself the allegation that Ms. Grenier was motivated to hide her settlement from bankruptcy does not hold water, so there is a strong additional reason to doubt that she would have contacted him out of the blue with such an offer.

- [85] I also find that in the recorded call Mr. Williams, perhaps in a state of financial desperation, used the none-too-subtle threat of a criminal prosecution for bankruptcy fraud in an attempt to deter Ms. Grenier from pursuing the legal action to recover the money as a loan. His words bear no other reasonable interpretation. To be expected in such a conversation, and notable by its absence, was the suggestion by him that her version of events is not true. (This included his response to the demand letter, which he disputed only to the extent that the principal was \$23,000 rather than \$20,000, and his lack of response to the comments she made at several points that it had been a loan rather than a gift.) What he asserted instead was that it could not be called a loan in the interests of her potential liability in the bankruptcy. His description of it as a gift, and of it being re-gifted by him in the future, was put forward as the way for her to avoid such liability. In other words, his entire focus was on what it is labelled as for their current situational purposes. That same focus on his situational needs, in preference to the substance of the original agreement, also permeated his evidence at trial, I find.
- [86] While Kallen's evidence superficially supported his father's position on the nature of the transaction, he candidly qualified the relevant points as stemming from his "general understanding" and his assumptions.
- [87] Finally, even if Mr. Williams's version of events had prevailed, I am not satisfied that the money that was provided by Ms. Grenier amounted to a gift as the case authorities define it. The understanding that he described - of a return with a benefit at a later time - lacked the unilateral and permanent nature of a true gift, and the benefit expected was clearly a form of consideration for advancing the money. The original expectation that it would be "re-gifted" after a year seems to be sufficiently certain as the duration of the agreement (Mr. Williams did not address Ms. Grenier's evidence about the extension and the notice provision). But even if a lack of certainty about the return date prevented it from being an enforceable agreement, Ms. Grenier would still have been in a strong position to argue that Mr. Williams will be unjustly enriched if he is allowed to retain the money (see for example, *Pacific Wagondepot Ltd. v. Hudson West Development Ltd.*, 2017 BCSC 1593, at para. 147).
- [88] In short, I believe Ms. Grenier's evidence on the nature of the transaction with Mr. Williams, and find that she loaned the money to him for one year, at an annual interest rate of 10%, and extended the term of the loan gratuitously for a further year when he had not completed the renovations, which became repayment on six months' notice. He then breached the agreement by failing to repay the money after notice was given. In the absence of any reference to compounding of interest in the evidence however, I cannot infer that anything other than simple interest was agreed to.
- [89] The fact that no additional benefit was provided by Mr. Williams in return for the extension of the term does not affect its validity. As expressed in *Rosas v. Toca*, 2018 BCCA 191:

183 When parties to a contract agree to vary its terms, the variation should be enforceable without fresh consideration, absent duress, unconscionability, or other public policy concerns, which would render an otherwise valid term unenforceable. A variation supported by valid consideration may continue to be enforceable for that reason, but a lack of fresh consideration will no longer be determinative.

[90] The only point on which I cannot accept the Greniers' evidence and prefer Mr. Williams's is whether he returned \$3,000 of the borrowed funds shortly after receiving them. I found it odd, given the fairly emphatic rejection of Mr. Williams's version of events in the rest of their evidence, that the most they could say about the return of that amount was that they did not recollect it. In the recorded call Ms. Grenier took no issue with Mr. Williams's assertion that the sum in the demand letter was wrong because he had returned some of it, and her statement later in the call of the amount owing was "more than \$20,000", which seems curiously imprecise in the circumstances.

[91] Accordingly, I find that the sum loaned to Mr. Williams was \$20,000.

[92] The damages for his breach of the agreement should be the amount that Ms. Grenier would have received if it had been repaid as demanded.

[93] The interest rate to be applied following the breach of such an agreement was helpfully dealt with in *Reimer v. South Asian Post Media Inc.*, 2018 BCSC 2205:

72 In these circumstances, a question arises as to whether interest after the term of the loan is to be calculated by reference to the contractual interest rate or the pre-judgment interest rate specified under the Court Order Interest Act, R.S.B.C. 1996, c. 79.

73 In addressing this issue, I find guidance in *Bank of America Canada v. Mutual Trust Co.*, 2002 SCC 43. In that case, Major J. explained at para. 49 that since a loan agreement with a specified interest rate is an agreement "on the cost of borrowing money over a period of time", then absent "exceptional circumstances", the interest rate on the loan prior to the breach is generally the appropriate rate to govern the "post-breach loan". A lower interest rate would be "unjust to the lender": *Bank of America Canada* at para. 49. See also *0679372 B.C. Ltd. v. The Winking Judge Pub Ltd.*, 2011 BCSC 633 at para. 9-22, which reaches more or less the same conclusion after a consideration of the text of ss. 1-2, and 8 of the Court Order Interest Act, and the case law interpreting it.

[94] I can identify no exceptional circumstances that would dictate otherwise, so simple interest at 10% per year will be applied from April 14, 2014 (the closing date of the home purchase, by which time I am satisfied all of the money must have been advanced), to the date of this judgment. The interest to April 14, 2019 ($\$2000 \times 5$) is \$10,000. The interest from then to the date of judgment is $\$2000 \times 350/365$ (the number of days of the current year) or \$1920. The total damages therefore are \$31,920.

- [95] Mr. Williams's counterclaim is more straightforward. To his credit, Mr. Grenier did not dispute the essential elements of the allegation and I have no difficulty in concluding that, while in a state of anger about the outstanding loan, he forced his way into Mr. Williams's house and pushed him. In the absence of any more detailed description of explicit threats to harm Mr. Williams, and given Kallen's concession that he may have been saying "You need to call Stacey", I cannot find that he uttered specific threats to harm Mr. Williams at that time (or in the intemperate text messages in the evidence), but I am satisfied that while he was at the home he spoke angrily and in a manner that Mr. Williams would have found frightening and disturbing.
- [96] As a result, I conclude that Mr. Grenier behaved in a manner that caused the apprehension of imminent harm and that he made direct physical contact with Mr. Williams, thus committing the torts of assault and battery.
- [97] Troubling as it would have been to Mr. Williams, the actual force inflicted was not extensive and did not leave any lasting physical harm. Mr. Williams's main motivation in making the counterclaim was to put Mr. Grenier on notice that his actions would not be tolerated, and to keep him away in the future. Therefore, I consider this to be a case in which fairly nominal damages are appropriate, mainly to vindicate the sanctity of Mr. Williams's home and person in the face of forceful interference of this kind, and to deter Mr. Grenier and others in similar situations from resorting to such actions. To achieve these objectives I will award damages of \$500 against Mr. Grenier. I will also order Mr. Grenier to have no contact with Mr. Williams and not attend at any place that he knows to be Mr. Williams's personal residence. That order may be varied by consent if Mr. Williams is content to allow contact in the future, which I hope will be the eventual outcome.
- [98] Both parties have succeeded in proving their claims. However, they also both recovered amounts that are within the jurisdiction of the Provincial Court (\$35,000 at the time the actions were filed). As a result, pursuant to Rule 14-1(10) of the Supreme Court Civil Rules, they are not entitled to receive costs other than disbursements, unless they demonstrate that there was nonetheless "sufficient reason for bringing the proceeding in the Supreme Court".
- [99] For the purposes of that sub-rule, disbursements "means money actually spent or for which the party is liable, and that all disbursements [that] actually occurred in the Supreme Court proceeding are recoverable (subject, of course, to the general provision in [current Rule 14-1(5)] that they were necessarily or properly incurred in the conduct of the proceeding)": *Canaccord Capital Corp. v. Clough*, 2000 BCSC 410, at para. 4.
- [100] If either party wishes to argue that there was a sufficient reason for bringing this matter in Supreme Court, so that costs are payable, they may make written submissions on that point, which are to be provided through Supreme Court Scheduling. A copy of those submissions must also be provided to the other party, who will have 14 days to provide their reply submissions.

[101] Any dispute about whether particular items are allowable disbursements will be dealt with by a reference to the Registrar.

"Schultes J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/04/2020BCSC0462.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/grenier-v-williams-2020-bcsc-462>

Prepared on 25 October 2026 · Esheria