

CANADA / JUDGMENT

Grewal v. Grewal

2013 BCSC 2146

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Supreme Court of British Columbia

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2013 BCSC 2146 Grewal v. Grewal

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Grewal v. Grewal,

2013 BCSC 2146

Date: 20131126

Docket: S112878

Registry: New Westminster

Between:

Zora Singh Grewal and

Harinderpal Kaur Grewal

Plaintiffs

And

Harbans Singh Grewal

Jasbir Kaur Grewal and

Prabvir Singh Grewal

Defendants

- and -

Docket: S120621

Registry: New Westminster

(initially Vancouver S080427)

Between:

Harbans Singh Grewal and

Jasbir Kaur Grewal

Plaintiffs

And

Zora Singh Grewal

Defendant

Before: The Honourable Mr. Justice Crawford

Supplemental Reasons for Judgment re Asset Division

Counsel for Harbans Singh Grewal, Jasbir Kaur Grewal and Prabvir Singh Grewal:

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Place and Date of Hearing:

New Westminster, B.C.

May 9, 2013

Place and Date of Judgment:

New Westminster, B.C.

November 26, 2013

Introduction

- [1] On September 2, 2011, I ruled on many of the principal issues between the parties. While the trial focussed on the dispute over the berry farm the three brothers bought in 2003, Harbans Grewal and Zora Grewal's falling out in late 2006 resulted in two additional actions between the brothers over houses and other assets they acquired since 1990. I found the two brothers had created a family economic unit that acquired assets over the years, and I made rulings regarding the asset division.

- [2] In mid-2012, Zora sought further consideration of the asset division, and I allowed additional argument that was provided in writing in late 2012.
- [3] On March 28, 2013, I gave brief reasons on the asset distribution between Harbans Grewal and Zora Grewal in their two actions, and I indicated that Harbans should consider Zora's proposal. Harbans evidently rejected that suggestion and promptly obtained a one million dollar mortgage on one of the contested assets, the commercial building.
- [4] I advised the parties I would provide further reasons on the asset division between Harbans and Zora. While I only reference Harbans and Zora, they are both married and represent the two families in this dispute. I will review the pleadings, some of the evidence, the arguments, the law, and end with a discussion and conclusions.

Applicable Facts

Pleadings

- [5] Harbans initially sought to have an order of partition selling the premises at 2115 Ridgeway, Abbotsford that had been purchased in 1991 in the names of Harbans, Jasbir and Zora. In his initial pleadings, Harbans conceded Zora contributed \$15,000. In his initial defence, Zora said the premises had been purchased as partners.
- [6] Zora then counterclaimed alleging a 23 year partnership with Harbans, and he claimed interests in the electrical company (originally Prince Enterprises; its shareholders were Harbans, Jasbir, and Zora) from its outset in 1990, a commercial building at 31386 Fraser Highway acquired in 1993 (one half being owned by Harbans, Jasbir and Zora), and a house at Legacy Court acquired in 2000 of which Zora had a two-fifths interest. Zora alleged family funds were used to acquire the assets.
- [7] In May 2008, Zora began his action against Harbans. Under the heading "partnership and trust relationship", he alleged:
 - 11. Commencing in or about 1986, the Plaintiff Zora and the Defendant Harbans commenced a partnership of working together in business, commencing with an electrical business and ultimately a series of electrical and related businesses and other businesses operated under various names and corporate entities.
 - 12. Over the course of time, the partnership evolved to include the Plaintiff Harinderpal and the Defendant Jasbir.
 - 13. The Defendant Harbans was responsible for the management of the business entities and responsible for managing the cash received from the business entities and investing cash from the businesses in other business ventures. In this position, and as a result of their family relationship and the understanding that the families were a joint economic unit, the Defendant Harbans owed a trust obligation and fiduciary obligation to the Plaintiff Zora and the Plaintiff Harinderpal to ensure that all monies received by the partnership were

accounted for, all expenses of the business were properly paid, and the resulting profits were shared equally between the Plaintiff Zora and his family on the one part and the and the Defendant Harbans and his family on the other part.

- [8] Zora alleged the involved businesses were the electric company, a grocery store on Fraser Highway, the commercial building on Fraser Highway and the berry farm that is the subject of the lawsuit between the three brothers. As well, he sought partition of the property that Harbans was living at - i.e., 31437 Legacy Court, Abbotsford. He sought various accounting remedies, including selling the Legacy property.
- [9] In February 2009, Harbans and Zora's actions were joined with the berry farm action for trial.
- [10] In early June 2009, further amendments were made to the pleadings. On June 22, 2009, the trial opened and continued until November 2009. In January 2010, arguments were heard.

Evidence at Trial

- [11] The evidence established a close family relationship between Harbans and Zora. They and their wives and children lived in one house at 2115 Ridgeway Street, Abbotsford from March 1991 until 2000 when they bought a second house at 31437 Legacy Court, Abbotsford that they subsequently moved into. Zora and Harinderpal did not move out of the Legacy house and back to Ridgeway house in December 2006 until their relationship with Harbans broke down.
- [12] Both brothers worked overseas before coming to Canada in the late 1980s. Harbans is a certified electrician. Zora left school early to work on the family farm in India and is not proficient in English. Harbans benefitted from his older brother Zora working on the family farm so that his younger siblings could be educated
- [13] For 17 years, the brothers lived and worked in harmony with Harbans expanding their early electrical business into other fields including real estate and a variety of commercial ventures.
- [14] A list of some of the transactions that Harbans and Zora were involved in together is a useful starting point:

1990

Harbans begins his electrical business

February 1991

Prince Enterprises Incorporated is created (Jasbir, Harbans and Zora shareholders)

4 March 1991

Harbans, Jasbir and Zora buy 2115 Ridgeway as one-third owners

November 1994

Prince Enterprises Incorporated is renamed to Prince Electric, and Jasbir runs Prince Lighting for a short time

1993

31836 South Fraser Way, a commercial building, is purchased with half of the shareholdings held by Harbans, Zora and Jasbir

1996

Zora's wife Harinderpal joins the 2115 Ridgeway household, and a family account is opened to run the combined household

June 1996

4173 Wright Street, Abbotsford, a farm, is purchased for \$350,000 with Harbans, Jasbir and Zora as joint tenants

October 1997

the farm is sold for \$524,000; it made a capital gain of approximately \$129,000 for which Zora declares a one-third capital gain

February 1999

Zora and Harinderpal buy a house at 1898 Knox Terrace for \$286,500, and it is sold in March 1999 for \$296,000

1999

Harbans sets up a numbered company, 575760 BC Ltd. to run the Fruiticana grocery store at 31831 South Fraser Way, but Zora and Harinderpal are not owners though Harinderpal works at the store

April 2000

Zora, Harinderpal and Harjit Grewal buy 2105 Ridgeway for \$160,000 with a \$112,000 mortgage

June 2001

2105 Ridgeway is sold to Jasbir's sister for \$164,500. Harbans collected the rent before the transfer to Jasbir's sister

2000

Harbans, Jasbir, Zora, Harinderpal and Harjit agreed to buy the house under construction at 31437 Legacy Court

2003

Harinder agrees to buy the berry farm and the three Grewal brothers take title equally

2004

the electrical company is re-named Prince Ventures Incorporated, with all the shares being in Harinderpal Grewal's name

The factual matrix regarding the pleadings

[15] In April 2011, due to the difficulties I was having with the evidence, I asked for further submissions regarding Zora's unjust enrichment claims as defined by the Supreme Court of Canada in *Kerr v. Baranow*, 2011 SCC 10.

[16] However, after submissions in July 2011, I concluded, based on the authorities Harbans submitted, that it was not appropriate to re-open the case when counsel argued they had put forward the case on the basis of the pleadings.

2 September 2011 Reasons

[17] Given the passage of time and the way I viewed the case, I then gave oral reasons for judgment on September 2, 2011.

[18] In the oral reasons, I set out the history of the family economic unit at paragraphs 11 through 34. I found a joint family economic unit existed. The joint family economic unit finding substantiated Zora's claims for assets accumulated between 1990 and 2006 by Harbans and Zora.

[19] I found the joint family economic unit's success was based on the two families' income and Harbans and Jasbir's business acumen and energy; additionally Harbans had Zora's able assistance in the electrical business and as a trusted lieutenant in other dealings and enterprises. Having Zora as an able and trustworthy supervisor of the electrical works freed Harban's time allowing him to get into other interests in real estate other than the commercial building and the grocery store. Harbans recognized Zora's contributions by giving Zora shared ownership of the assets that the joint enterprises acquired, e.g., the house titles and company shares.

[20] My September 2011 ruling awarded Zora the Ridgway house, free and clear, and his interest in the berry farm. But he had to give up his interest in the commercial ventures notwithstanding his named interests.

[21] In those reasons, I provided decisions on the principal matters in issue between the parties - i.e., the berry farm ownership and the joint family economic unit. I recognised those decisions would reframe the lengthy accounting submissions that counsel made, and I trusted the parties could, with those decisions in hand, resolve the matters before them.

- [22] Unfortunately, they could not. But I did gather from counsel that resolution attempts were made. In mid-2012, Harminder brought an application for removal of the CPL on the berry farm, but the application was adjourned as being premature.

Accounting for the berry farm and the joint family economic unit

- [23] On June 15, 2012, Zora Grewal applied to make supplemental arguments regarding the relief flowing from the Court's finding of a joint family economic unit between Harbans and Zora Grewal from 1990 to 2006. Additional rulings were sought regarding the joint family economic unit's start and end date.
- [24] On September 11, 2012, I allowed the application and ordered the parties provide supplemental submissions on the relief flowing from the joint family economic unit finding. Additionally, given my initial reasons on the berry farm, I asked for new argument on the berry farm accounting. In latter 2012, submissions were filed.
- [25] In January 2013, on a telephone conference with counsel when it became apparent oral submissions could not be scheduled, I let Zora argue the start and end dates of the joint family economic unit.

The Submissions

Zora's submission - October 11, 2012

- [26] Zora's submitted that he and Harbans were partners. Essentially, Zora argued the joint family economic unit find should be reconsidered and replaced with a partnership finding between Zora and Harbans.
- [27] Zora said I should look to a number of factors, including: the family relationship; the purchase of the Ridgeway and Legacy houses; the various incarnations of the electric company's ownership; the bank accounts; and Harban's money management that included manipulating Zora's ostensible income for the family economic unit's benefit.
- [28] Zora accepted the joint family economic unit finding, but he argued the basis for distributing the assets was a partnership. Alternatively, if no partnership existed, the court should find an agreement that Zora would be treated as an equal and the assets would consequently be shared equally; finally if the court found no such agreement existed, the maxim "equality delights in equity" should come into play. Zora listed the assets that should be considered and sought an accounting.
- [29] Zora submitted the strong and positive relationship between Harbans and Zora demonstrated their business dealings as equals. Zora testified that when Harbans began his electrical business, Harbans asked him to be his equal partner and he agreed, and this point was further evidenced by the families living together; Zora's name was on both the Ridgeway and Legacy house titles.

- [30] Further, for Harbans to suggest that Zora was merely an hourly or salaried employee was inconsistent with Zora's tax returns that showed his income was roughly equal with Harbans's over the many years of the electrical companies operations.
- [31] Zora submitted that in light of the substantial arguments from Harbans and Zora regarding the other parties' lack of credibility, the Court should make specific findings regarding the parties' credibility.
- [32] Zora expanded on the credibility issue noting: the court did not accept Harbans' evidence that Zora had no interest in the berry farm; that Harbans and Jasbir admitted to forging Zora's signature to fraudulently obtain Home Owner's Grants for the Ridgeway house when both families were living at Legacy house; that Harbans and Jasbir admitted forging Zora's signature on 293075 B.C. Ltd.'s (the commercial building) corporate resolutions; and that Harbans refused to comply with court orders and judgments including:
- a) December 5, 2005 Director of Employment Standards - \$4,555.33;
 - b) October 18, 2001 judgment for City of Abbotsford - \$3,243.64; and
 - c) March 5, 2007 judgment for Boughton Law Corporation - \$6,065.18.

Harbans Response: November 13, 2012

- [33] Harbans submitted Zora was appealing the Court's September 2011 factual findings where the Court ruled: (1) what assets the joint family economic unit been acquired; (2) that the joint family unit's success was largely due to Harbans' business acumen; (3) that Zora should receive the Ridgeway house free and clear and keep his interest in the berry farm; and (4) that Zora and Harinderpal give up their interests in the other assets.
- [34] Harbans submitted no grounds existed to reopen the asset distribution issue.
- [35] Paragraph 31 of Harbans's submission states:
31. Harbans submits that the Court's findings of fact with respect to the assets ostensibly held in the collective names of Zora, Harinderpal, Harbans and Jasbir are amply supported by the evidence at trial. Harbans further submits that the Court's findings with respect to his additional, but separate business interests are also supported by the evidence at trial.
- [36] As well, at para. 20, Harbans conceded the division of assets was made on an equitable basis pursuant to s. 10 of the Law and Equity Act, R.S.B.C. 1996, c. 253.
- [37] However, Harbans argued that Zora should be responsible for the monies owing on both the Ridgeway and Legacy house mortgages as of 22 August 2006.

Zora's Reply: December 6, 2012

- [38] Zora argued that he sought a reconsideration of the asset division because: (1) of the law and the evidence at trial; (2) evidence that demonstrated Harbans was using the house line of credit to loan Joe Gill monies; (3) Harbans was effectively a trustee of the joint family funds; and (4) asset ownership was not the only indicator of ownership (citing Harinderpal holding all the shares in Prince Ventures Inc. in her name in 2005-06 and the Knox Terrace purchase that Zora and Harinderpal could not have funded). Thus, he argued all the assets must have their origins in the joint family economic unit.
- [39] Zora asserted Harbans \$150,000 RSPs and \$1,000,000 in Mutual Funds should be considered as the joint family economic unit's assets notwithstanding Harbans trying to distance himself from those assets.
- [40] Zora argued that if the Court agreed with Harban's argument, then Zora should retain his shares in the commercial building. Further, Zora noted Harbans had not sought a remedy whereby Zora gave up his assets; therefore the court should not divest Zora of his assets.
- [41] Regarding the date the relationship terminated and the monies that Zora might owe, Zora noted the house loans to purchase Harbans and Zora's shares of the berry farm had been fully finalized by January 20, 2004.
- [42] Zora also argued that Harbans utilized the family assets' (the houses) credit: (1) from March 20, 2005 - July 6, 2005, advances of \$550,960 were taken, but they were repaid September 20, 2005, and the balance was nil until April 13, 2006; (2) on April 13, 2006, a \$60,000 advance was made to fund the far; (3) on May 25, 2006, an \$110,000 advance was made for a loan to Joe Gill and the mortgage balance of \$170,000; and (4) on June 2, 2006, an \$330,000 advance was made, but it was repaid August 25, 2006.
- [43] Given my ruling that Zora terminated the joint family economic unit 22 August 2006, Harbans argued Zora should be liable for the funding of the loan monies and not entitled to any benefit from the loan repayment on August 25, 2006. But Zora argued a later termination date should be selected.
- [44] Regarding that point, on March 28, 2013, I held the end date should not change, but I found that Zora was not liable for the loan as the initial loan for the berry farm had been paid off and that Harbans solely created and controlled the subsequent borrowings.

Law

Partnership

- [45] On this matter, the law has been eloquently summarized by Madam Justice Wedge in *Blue Line Hockey Acquisition Co. Inc. v. Orca Bay Hockey Limited Partnership*, 2008 BCSC 27 at paras. 35-40:

35 The law does not permit partners to take advantage of one another. At common law, partnership is a presumptively fiduciary relationship. While a partnership exists, the law imposes on its members the duty of utmost loyalty with respect to the business and assets of the partnership. In addition to the duties existing at common law, partners in this province are required by statute to act with "utmost fairness and good faith" toward one another (Partnership Act, R.S.B.C. 1996, c. 348, s. 22(1)).

36 However, the law requires cogent evidence establishing the presence of the prerequisites of partnership before it will impose these onerous duties.

37 A partnership exists only if:

- a) There is a valid contract of partnership; and
- b) The members of the partnership are
 - (i) carrying on business;
 - (ii) in common; and
 - (iii) with a view to profit.
- (a) The contractual requirement

38 Partnership is defined in s. 2 of the Partnership Act as the "relation which subsists between persons carrying on business in common with a view to profit". While the statute does not mention contract, the existence of a contractual foundation of partnership is essential:

Partnership, although often called a contract, is more accurately described as a relationship resulting from contract. This was made clear in the original statutory definition introduced into the House of Lords but not, ultimately, in the Act [of 1890] itself. Nevertheless, the origin of the relationship in an agreement, whether express or implied, was clearly established before the Act and may legitimately be inferred from its provisions.

(R.C. l'Anson Banks, Lindley & Banks on Partnership, 18th ed. (London: Sweet & Maxwell, 2002) [Lindley & Banks] at para. 2-13) (Emphasis in the original)

39 Whether oral or written, there must be a completed agreement before a partnership will be found to exist. In the case of *Porter v. Armstrong*, [1926] S.C.R. 328, [1926] 2 D.L.R. 340 [Porter] at para. 3, the court said the following:

Partnership, it is needless to say, does not arise from ownership in common, or from joint ownership. Partnership arises from contract, evidenced either by express declaration or by conduct signifying the same thing. It is not sufficient there should be community of interest; there must be contract. (Emphasis added)

40 Partnerships arise from contract, and it follows that the contract underlying a partnership must meet all of the prerequisites of a contract. Those prerequisites are the following:

- a) An offer containing all of the essential terms, and an acceptance of the offer (that is, a meeting of the minds or consensus ad idem);
- b) Certainty of the agreed terms;
- c) Consideration; and
- d) The intention to create legal relations.

[46] Regarding joint ventures, her Ladyship said at paras. 57-58:

57 The ingredients of a joint venture are the following:

- a) As is the case with partnerships, the joint venture must have a contractual basis; and
- b) There must be:
 - (i) a contribution of money, property, effort, knowledge or other asset to a common undertaking;
 - (ii) a joint property interest in the subject matter of the venture, which is usually a single or ad hoc undertaking;
 - (iii) a right of mutual control or management of the venture;
 - (iv) an expectation of profit and the right to participate in the profits;

(Canlan Investment Corp. v. Gettling (1997), 37 B.C.L.R. (3d) 140, 95 B.C.A.C. 16 [Canlan (BCCA)])

58 As with a partnership, a joint venture is founded on a contract between the parties. In Central Mortgage & Housing Corp. v. Graham (1973), 43 D.L.R. (3d) 686, 13 N.S.R. (2d) 183 (N.S.T.D.) [Central Mortgage], the court cited Williston on Contracts, 3rd ed. (1959) at p. 706:

.... A joint venture is an association of persons, natural or corporate, who agree by contract to engage in some common, usually ad hoc undertaking for joint profit by combining their respective resources, without, however, forming a partnership in the legal sense (of creating that status) or corporation ... (Emphasis added)

Fiduciary Duties

[47] And her Ladyship commented on fiduciary duties at para. 72:

72 It is the nature of the relationship, not the specific category of actor involved, which gives rise to fiduciary duties. Sopinka J. adopted at p. 599 the characteristics of a fiduciary relationship described by Wilson J. in Frame v. Smith, [1987] 2 S.C.R. 99 at para. 40, 42 D.L.R. (4th) 81 [Frame]:

- 1) The fiduciary has scope for the exercise of some discretion or power.
- 2) The fiduciary can unilaterally exercise that power or discretion so as to affect the beneficiary's legal or practical interests.

- 3) The beneficiary is peculiarly vulnerable to or at the mercy of the fiduciary holding the discretion or power.

[48] In *Elder Advocates of Alberta Society v. Alberta*, 2011 SCC 24 at paras. 27-36, Chief Justice McLachlin summarized the requirements for finding an ad hoc fiduciary relationship:

27 The plaintiff class argues that, in addition to traditionally recognized categories like trustee or solicitor-client relationships, a fiduciary duty more broadly may arise whenever one person exercises power over another "vulnerable" person. They rely on *Frame v. Smith*, [1987] 2 S.C.R. 99, where Wilson J., in dissenting reasons later adopted and applied in *Lac Minerals Ltd. v. International Corona Resources Ltd.*, [1989] 2 S.C.R. 574, outlined the hallmarks of a fiduciary duty:

Relationships in which a fiduciary obligation have been imposed seem to possess three general characteristics:

- (1) The fiduciary has scope for the exercise of some discretion or power.
- (2) The fiduciary can unilaterally exercise that power or discretion so as to affect the beneficiary's legal or practical interests.
- (3) The beneficiary is peculiarly vulnerable to or at the mercy of the fiduciary holding the discretion or power. [p. 136]

28 It is now clear that vulnerability alone is insufficient to support a fiduciary claim. As Cromwell J. explained in *Galambos v. Perez*, 2009 SCC 48, [2009] 3 S.C.R. 247, at para. 67:

An important focus of fiduciary law is the protection of one party against abuse of power by another in certain types of relationships or in particular circumstances. However, to assert that the protection of the vulnerable is the role of fiduciary law puts the matter too broadly. The law seeks to protect the vulnerable in many contexts and through many different doctrines.

Cromwell J. concluded, at para. 68, that:

[68] ... while vulnerability in the broad sense resulting from factors external to the relationship is a relevant consideration, a more important one is the extent to which vulnerability arises from the relationship: *Hodgkinson*, at p. 406. [Emphasis added.]

29 As useful as the three "hallmarks" referred to in *Frame* are in explaining the source fiduciary duties, they are not a complete code for identifying fiduciary duties. It is now clear from the foundational principles outlined in *Guerin v. The Queen*, [1984] 2 S.C.R. 335, *Hodgkinson v. Simms*, [1994] 3 S.C.R. 377, and *Galambos* that the elements outlined in the paragraphs that follow are those which identify the existence of a fiduciary duty in cases not covered by an existing category in which fiduciary duties have been recognized.

30 First, the evidence must show that the alleged fiduciary gave an undertaking of responsibility to act in the best interests of a beneficiary: Galambos, at paras. 66, 71 and 77-78; and Hodgkinson, per La Forest J., at pp. 409-10. As Cromwell J. wrote in Galambos, at para. 75: "what is required in all cases is an undertaking by the fiduciary, express or implied, to act in accordance with the duty of loyalty reposed on him or her."

31 The existence and character of the undertaking is informed by the norms relating to the particular relationship: Galambos, at para. 77. The party asserting the duty must be able to point to a forsaking by the alleged fiduciary of the interests of all others in favour of those of the beneficiary, in relation to the specific legal interest at stake.

32 The undertaking may be found in the relationship between the parties, in an imposition of responsibility by statute, or under an express agreement to act as trustee of the beneficiary's interests. As stated in Galambos, at para. 77:

The fiduciary's undertaking may be the result of the exercise of statutory powers, the express or implied terms of an agreement or, perhaps, simply an undertaking to act in this way. In cases of per se fiduciary relationships, this undertaking will be found in the nature of the category of relationship in issue. The critical point is that in both per se and ad hoc fiduciary relationships, there will be some undertaking on the part of the fiduciary to act with loyalty. [Emphasis added.]

33 Second, the duty must be owed to a defined person or class of persons who must be vulnerable to the fiduciary in the sense that the fiduciary has a discretionary power over them. Fiduciary duties do not exist at large; they are confined to specific relationships between particular parties. Per se, historically recognized, fiduciary relationships exist as a matter of course within the traditional categories of trustee-cestui qui trust, executor-beneficiary, solicitor-client, agent-principal, director-corporation and guardian-ward or parent-child. By contrast, ad hoc fiduciary relationships must be established on a case-by-case basis.

34 Finally, to establish a fiduciary duty, the claimant must show that the alleged fiduciary's power may affect the legal or substantial practical interests of the beneficiary: Frame, per Wilson J., at p. 142.

35 In the traditional categories of fiduciary relationship, the nature of the relationship itself defines the interest at stake. However, a party seeking to establish an ad hoc duty must be able to point to an identifiable legal or vital practical interest that is at stake. The most obvious example is an interest in property, although other interests recognized by law may also be protected.

36 In summary, for an ad hoc fiduciary duty to arise, the claimant must show, in addition to the vulnerability arising from the relationship as described by Wilson J. in Frame: (1) an undertaking by the alleged fiduciary to act in the best interests of the alleged beneficiary or beneficiaries; (2) a defined person or class of persons vulnerable to a fiduciary's control (the beneficiary or beneficiaries); and (3) a legal or substantial practical interest of the beneficiary or beneficiaries that stands to be adversely affected by the alleged fiduciary's exercise of discretion or control.

Discussion

Credibility

- [49] Both parties argued at length about credibility. And both the parties satisfied me that the opposite party was not entirely credible.
- [50] Regarding Zora's evidence, his evidence was at times vague and contradictory. For instance, he was unable to identify his own distinctive signature, which is a rather unbalanced and wavy capitalization of his name. The reality is, however Zora cannot read or write English or Punjabi and has a rudimentary knowledge of arithmetic. Consequently, his ability to give testimony as to the business aspects was compromised.
- [51] Regarding Harinderpal's evidence, her evidence was she joined the household in 1996 and was assured early on that everything was "50/50". Harbans and Jasbir denied suggesting to Harinderpal when she joined the family in 1996 that "things (assets) would be 50/50". Harinderpal said that Harbans and Jasbir made the withdrawals from Zora and Harinderpal's Credit Union account. However, she was unable to give any direct evidence. She only could point to various deductions from bank accounts for the joint family economic unit. She was unable to explain what the withdrawals were for, and she did not link the withdrawals to what Harbans might have done with the funds. Harbans correctly summarized Harinderpal's evidence as being solely focused on her belief that "everything was a partnership" and "all assets were 50/50".
- [52] Zora's comments on Harbans's credibility are found at para. 31, and I find them accurate.

Partnership

- [53] All of the documented events occurred. For instance, the two families lived together in one house, initially all together on one floor and then an upstairs/downstairs relationship as Zora and Harinderpal's family grew by four children between 1996 and 2000.
- [54] On the Ridgeway house, Zora was a one-third owner.
- [55] On the Legacy house, Zora and Harinderpal were two-fifths owners.
- [56] On the electrical company's incarnation initially Harbans, Jasbir and Zora were the shareholders; Harbans and Zora were equal shareholders of Prince Electric; and Harinderpal alone was the shareholder Prince Ventures. Thus Zora saying he was a partner in the electrical business is not unreasonable.
- [57] Regarding the bank accounts, the little clear evidence I have would indicate that relatively little was banked by Zora over the years. In particular, from 2005 - 2006 when Harinderpal was the sole shareholder of Prince Ventures, all of Zora's income was being managed and manipulated by Harbans.

- [58] None of these facts are consistent with Harbans assertion that Zora was merely a lowly paid employee.
- [59] Rather, they demonstrate that, given Zora's lack of education and writing and arithmetical skills, he completely relied on Harbans for managing the family economic unit.
- [60] In February 1993, when Harbans, in conjunction with another family, engineered purchasing the commercial building on South Fraser Way, Zora became a one-sixth shareholder.
- [61] In mid-1996, a farm on Wright Road was purchased in the names of Harbans, Jasbir and Zora. Harbans funded that purchase. A year later, the property sold for a profit, and Zora declared a capital gain.
- [62] In February 1999, the Knox Terrace property was purchased by Zora and Harinderpal. Zora and Harinderpal did not have funds to purchase and Harbans supplied the monies.
- [63] Similarly in April 2000, Harbans funded purchasing the Ridgeway house and listed Zora, Harinderpal and Hargit Gill as the owners.
- [64] All of these objective criteria point strongly to a partnership. But Harbans "masterminded" the work and effort to develop the joint family economic unit assets. None of Zora's evidence, other than his evidence regarding the contribution to Ridgeway house and the beginnings of the electrical company, deals with the obtaining of the other assets and what, if any, agreements were made about how they were obtained, created and managed thereafter.
- [65] Harbans argued Zora and Harinderpal's evidence was implausible. But I do not find their evidence implausible as words of "partnership" - e.g., sharing, partners, or 50/50 - might well have been said. Harbans described Zora's partnership allegations as spurious. I do not doubt that Zora saw himself as a partner in the general sense of being equal to Harbans, and, that from 1990 - 2006, they acted together in combining their household, assets, and their efforts to establish the electric business. While Harbans may argue Zora was not his partner, the assets the brothers accumulated and that Zora was either a one-third or equal partner or owner with Harbans justifies Zora's position that a joint family economic unit existed.
- [66] Nonetheless, as Harbans argues and I accept, the basis for the claim in partnership lies in contract. Clear evidence of offer, acceptance, consideration, certainty, and an intention to create legal relations needs to exist. On this case's facts, that evidence simply does not exist. In itself, as a matter of law, I do not find assurances give rise to a partnership finding.

- [67] Rather, as I previously found, such statements were consistent with a joint economic family unit. I base this finding on the statements and actions of Harbans and Jasbir, and Zora and Harinderpal. I am satisfied that Harbans "managed" Zora's income from the electrical business for the joint family economic unit's benefit and in turn managed and invested the incomes to purchase the commercial building, the grocery business, the berry farm, and several houses.
- [68] Zora and Harinderpal in turn were able to rely on Harbans acting fairly and in the best interest of the integrated families. Harbans controlled their income, the finances, the investments, and the banking.
- [69] The focus then must be on the relationship between Harbans and Zora. Zora was in the eyes of the law, a vulnerable person. That vulnerability arose from the relationship between Harbans and Zora. Harbans acquired trained skills and fluency in English, and he developed business acumen. His elder brother was dependent on him from the late 1980s. Harbans gave assurances to Zora from time-to-time regarding his share in the houses and other assets that were generated from the joint family economic unit. The assurances did not make a contract or create a partnership, but they were strong assurances that the homes and the assets were being shared. The verbal assurances were confirmed by Zora's name being placed on the houses and assets. Those assurances implied Harbans was acting in the Zora's best interest, and after 1996, for Zora and Harinderpal. Harinderpal gave evidence of these assurances when she joined the family economic unit.
- [70] Prior to 2005 had a question been directed to Harbans regarding Zora's share in the houses and assets, I do not doubt Harbans would have recognized Zora's legal entitlement to his shares in the assets and the homes.
- [71] Harbans, as the money manager, had and did exercise his discretionary power over the assets to benefit Zora. Harbans's discretionary power affected Zora's legal and practical interests in those houses and assets.
- [72] Harbans's discretionary power can be seen in his response to Zora "changing sides" in the berry farm litigation in late 2006. Harbans started litigation to partition and sell the Ridgeway house that Zora and Harinderpal had returned to.
- [73] Thus, I find and conclude that Harbans had expressly and by implication created an ad hoc fiduciary relationship with Zora.

Conclusion

- [74] In light of my finding of a joint family economic unit and the trust situation that arose from Harbans' assurances and Zora's reliance thereon, an ad hoc fiduciary relationship exists that must be reflected in the division of the assets that the joint family economic unit has acquired.

- [75] My initial concern was to ensure Zora and Harinderpal had a house. I have dealt with the berry farm separately. I ordered Zora give up his interest in the other joint family economic unit assets. However, I had no evidence of the electric company's corporate structures save that Harinderpal was a sole shareholder for part of 2006. Some evidence demonstrated that Zora owned a one-sixth share in the commercial building. I have really had little evidence regarding the values, so I do not know if the building is an asset or a liability.
- [76] In the arguments made after September 2011, Harbans accepted the court's ruling. However, Zora sought reconsideration. He sought a finding of a partnership by arguing it could be found in looking at the various ownership documents. But aside from Zora's evidence about the start of the electrical company and the assurances given about things being shared or 50/50, the evidence did not meet the contractual requirements of Blueline.
- [77] Harbans was the manager and developer of the joint family economic assets. The family unit devoted themselves to caring for their families, improving their homes and improving their overall economic wealth in their various businesses and Harbans has moved those assets into businesses that Zora has not played any part.
- [78] I do not find Zora responsible for the total loans (line of credit) on the Ridgeway and Legacy houses as of 22 August 2006. The evidence is clear that Harbans was the money manager for the families. By January 2004, the 2003 mortgage loan on the houses that had been invested in the berry farm was paid off. Harbans then "reborrowed" against the houses.
- [79] To accept Harbans's argument to impose more of the debt on Zora would open up the scope of Harban's business activities outside what I have found to be part of the joint family economic unit. It would open the door to the wide ranging accounting that Zora's counsel seeks, namely all business ventures that Harbans had been involved in and were extant at the end of August 2006. The joint family economic unit is fundamentally based on the Ridgeway house ownership and the electrical company.
- [80] Zora sought a wide-ranging accounting into all the business ventures that Harbans has become involved in since 1990. I did not see that request as being appropriate. Zora's interest should be properly limited only to those matters within his knowledge, where his interest showed on title, and grounded as part of the joint family economic unit.
- [81] Thus, notwithstanding my finding of a fiduciary relationship, I will not widen the scope of the accounting. First, Harbans' business activities cannot always said to be joint. Second, this litigation has to come to a stop. None of the participants can afford to carry on the fight any further.
- [82] In my March 28, 2013 reasons, I asked Harbans to consider the proposal that Zora made. Harbans has not responded save that it appears he promptly mortgaged the commercial building for \$1,000,000. But my reasons included a proposal, not an order of the court.

- [83] Zora did accept he would be responsible for a \$30,000 mortgage liability on the Ridgeway house. I order that the Ridgeway house be put in Zora and Harinderpal's names, subject to the \$30000 mortgage debt.
- [84] Last, Zora made the point that Harbans had not in any of the litigation sought return of Zora's commercial building shares and therefore the court could not so order. Thus, regarding the commercial building, Zora is entitled to retain his one-sixth share, and it should be valued as of August 22, 2006 so as to allow Harbans to buy-out his interest.

Costs

- [85] In a separate ruling on the costs in the berry farm case, I have awarded costs. In those reasons, I noted the trial itself was some 20 days and there have been several days of court applications, rulings, affidavits and written arguments.
- [86] The Harbans-Zora actions were tried together with the berry farm case and occupied approximately one-third to one-fifth of the trial time, and about one-third of the later arguments, hearings and rulings.
- [87] Pretrial it appears the focus was on the berry farm issues before Arnold-Bailey J.
- [88] Although I would not call the Harbans-Zora actions complex, they were similar to family property actions with hardened positions, issues of credibility, and barely disguised bitterness. It was hard fought with few concessions. Zora sought re-consideration which added to the length of the matter and I have altered the original judgment to allow Zora to retain his interest in the commercial building.
- [89] Pearlman J. in *Cruise Connections Canada v. Cancellieri*, 2013 BCSC 1, listed the factors giving rise to Scale C costs:

28 Under the Supreme Court Civil Rules, Appendix B, ss. 2(2) and 3(1), costs may be awarded on one of three scales:

- (a) Scale A for matters of little or less than ordinary difficulty, at \$60 per unit;
- (b) Scale B for matters of ordinary difficulty, at \$110 per unit; and
- (c) Scale C for matters more than ordinary difficulty, at \$170 per unit.

29 Section 2(3) of Appendix B provides that the court may take into account the following factors in fixing the appropriate scale:

- (a) whether a difficult issue of law, fact or construction is involved;
- (b) whether an issue of importance to a class or body of persons, or as a general interest;
- (c) whether the result of the proceeding effectively determines the rights and obligations as between the parties beyond the relief that was actually granted or denied.

30 In *Mort v. Saanich School Board No. 63*, 2001 BCSC 1473, at paras. 5 and 6, the court identified the factors relevant to determining the difficulty of a matter as including:

- (a) the length of the trial;
- (b) the complexity of the issues involved;
- (c) the number and complexity of pre-trial applications;
- (d) whether or not the action was hard fought with little or nothing being conceded along the way;
- (e) the number and length of examinations for discovery;
- (f) the number and complexity of experts' reports; and
- (g) the extent of the effort required in the collection and proof of facts.

[90] Here one can say the trial was long, complex in the sense substantial assets were sought in the context of two families rather than a business context, it was hard fought, and there was considerable effort made to collect and prove facts. While not of the complexity of *Cruise Connections*, I find this case of more than ordinary difficulty and Zora is entitled to his costs at Scale C.

"The Honourable Mr. Justice Crawford"

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