

CANADA / JUDGMENT

Hsu v. Hsu

2023 BCSC 683

COURT

Supreme Court of British Columbia

DECIDED

26 April 2023

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2023 BCSC 683 Hsu v. Hsu

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Hsu v. Hsu,

2023 BCSC 683

Date: 20230426

Docket: S145456

Registry: Vancouver

Between:

A-Tui Hsu also known as A-Tui Hsieh Hsu, Deceased by her Litigation Representative, Chun-Yen Hsu

Plaintiff

And

Henry Yan-Yong Hsu and Lih Wen Hsu

Defendants

Before: The Honourable Justice C. Ross

Reasons for Judgment

Counsel for the Plaintiff:

H.H. Low, K.C

Counsel for the Defendants:

D. Sue-A-Quan

Place and Date of Trial:

Vancouver, B.C.

October 3-7, 11, 17-21, 24-26, 28, November 1-3, 8-10, 28-30 and December 1, 2022

Place and Date of Judgment:

Vancouver, B.C.

April 26, 2023

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Introduction

[1] In 2014, A-Tui Hsu commenced proceedings to recover a house located at 5662 McMaster Road, Vancouver, British Columbia (the "McMaster Property") that was, prior to 2009 registered solely in her name. The litigation was initiated when, in 2014, having returned to live in Taiwan the previous year, Mrs. Hsu learned that title to McMaster Property had been transferred to her son Henry Yan-Yong Hsu ("Henry") and grandson Lih Wen Hsu ("Lih Wen") and they refused to return the title to her. Mrs. Hsu died in 2016 and the litigation has been maintained by her daughter Chun-Yen Hsu, as litigation representative.

- [2] The plaintiff's position is that transfer of the McMaster Property should be set aside and it be declared that the defendants are holding the property in trust for Mrs. Hsu's estate on the basis that:
- a) Neither Henry nor Lih Wen paid any consideration for the property and therefore, by operation of law, they hold it on resulting trust;
 - b) The defendants have the onus to rebut the presumption by proving an intention by Mrs. Hsu to make an absolute, immediate and unconditional gift;
 - c) The (English language) deed of gift made by a lawyer and signed by Mrs. Hsu is not sufficient evidence of Mrs. Hsu's intention to make an absolute and immediate gift because:
 - (i) Mrs. Hsu did not receive fulsome legal advice about the transaction to protect her interest; and
 - (ii) Intend an inter vivos transfer where she relinquished all interest and right to her home and therefore, the resulting trust presumption applies.
 - d) The resulting trust presumption is not rebutted with evidence of intention as confirmed by independent legal advice. Mrs. Hsu did not get fulsome advice or proper interpretation of her instructions or the lawyer's advice when title was transferred;
 - e) Mrs. Hsu's true intention was to give the property to Lih Wen:
 - (i) After her death; and
 - (ii) Conditional upon her being cared for by his parents for the rest of her lifetime.
 - f) When Mrs. Hsu returned to Taiwan for her care, she wanted to sell the property. She then learned Henry took the view that she had gifted it absolutely. However, as the transfer had been procured by him, it should be set aside also on the law of unconscionable procurement.
 - g) Furthermore, the transfer should be set aside on the principles of unjust enrichment. There is no juristic reason for Henry to be able to keep a property where he did not care for his mother for her lifetime.
- [3] The defendants' position is that:
- a) Henry contributed half of the purchase price for the McMaster Property so that he held a 50 percent beneficial interest in the property from the date of purchase.
 - b) In 2009, Mrs. Hsu intended to make an immediate gift of her remaining half beneficial interest in the McMaster Property.
 - c) The legal advice that she received was adequate.

- d) In 2013, when Mrs. Hsu was purporting seek a return of McMaster Property she had forgotten that she had made the transfer in 2009 as a result of a decline in her memory and cognitive facilities.
 - e) In the alternative, if the transfer was conditional upon Henry providing care for Mrs. Hsu during her lifetime, he had provided that care by giving her NT \$20 million from the sale of the Hangzhou Property.
- [4] As will be seen in some detail below, there are numerous conflicts in the evidence, many with respect to matters that are peripheral to the issues in this litigation, except for credibility. In particular, there is a will executed by Mrs. Hsu in Vancouver in 1999 and a will executed by her in Taiwan in 2013 that will likely give rise to further litigation, depending in part on the results of the present proceeding. In order not to intrude upon the fact finding in future litigation, I will attempt to find only those facts necessary to resolve the issues in the present litigation.
- [5] I have referred to family members by their first names to avoid confusion, meaning no disrespect.

Background

The Family

A-Tui Hsu

- [6] Mrs. Hsu was born in Yilan, Taiwan on July 23, 1930. She died on September 16, 2016. Her native dialect was Taiwanese, which is a dialect distinct from both Mandarin and Cantonese. Mrs. Hsu received an elementary school level of education during a period in which Taiwan was under Japanese occupation.
- [7] Mrs. Hsu married Hsin-Tung Hsu, who died on July 30, 1991. They had seven children:
- a) Chien-Ming Hsu ("Chien-Ming") (eldest son);
 - b) Chien-Shun Hsu ("Chien-Shun") (second son);
 - c) Henry Yan-Yong ("Henry") (third son);
 - d) Te-Yung Hsu ("Te-Yung") (youngest son);
 - e) Hsueh-O Hsu aka Cher-O Hsu Lin ("Cher") (eldest daughter);
 - f) Hsueh-Mei Hsu ("Hsueh-Mei") (second daughter); and
 - g) Chun-Yen Hsu ("Chun-Yen") (youngest daughter)
- [8] The eldest son, Chien-Ming, was born January 10, 1950. He has three children, Arnold, Kate, and Eric.

- [9] The second son, Chien-Shun, was born on June 25, 1952 and died in infancy.
- [10] The third son, Henry, was born on September 26, 1958. He married Chiu Chu Hsu ("Pearl") in 1987. They have two children, Lih Wen and Flora.
- [11] Youngest son Te-Yung was born November 7, 1960. He has one child, Tau-Zen.
- [12] Eldest daughter, Cher was born January 6, 1948 and died in February 2008. She was married to Dr. Jung Tsung Lin ("Dr. Lin"). They had two children Angela I-Chun ("Angela") and Teddy Yi-Hsiang ("Teddy").
- [13] Second daughter Hsueh-Mei was born on February 22, 1954. She is married to Min Der Lin.
- [14] Youngest daughter Chun-Yen was born on April 8, 1956. She is married to Ten-Seng Jen ("Frank").
- [15] Mrs. Hsu and her husband lived in Yilan, Toucheng Taiwan. They operated a fishing supply business and experienced considerable financial success. The couple purchased a number of properties in Toucheng and Taipei City. Mrs. Hsu was interested in investing and invested in stocks in addition to the real estate purchases.
- [16] Mrs. Hsu was clearly a woman of fine character. Frank stated that Mrs. Hsu was very intelligent, was hard-working, and was humble. She was very knowledgeable about investments.
- [17] Chun-Yen stated that both her parents were devout Buddhists. Her mother taught the children to be honest, not pretentious, not to behave one way in public and another in private, to work hard and be serious, and not to look down on poorer people. She stressed the importance of frugality, hard work and investing. She stated that her mother often told her about the need to save for your old age.
- [18] Pearl stated that Mrs. Hsu was very devout. She had a keen sense of investments. She was very interested in the children's education. She stressed honesty and doing the right thing.
- [19] Lih Wen described Mrs. Hsu as a very compassionate person who always had time for them. She gave very thoughtful and helpful guidance. She was very devout, intelligent and disciplined. She would persevere through hardship. She was very welcoming to family members and very interested in education for the children.
- [20] Both parents put a high value on education and encouraged all of their children to complete university, which all of the surviving children did. Chun-Yen stated that her parents paid the children's tuition and living expenses while they were at school. They purchased an apartment that she, Henry, and Te-Yung lived in while attending university.
- [21] As will be discussed at greater length below various real estate properties were purchased in Taiwan by Mrs. Hsu and Hsin-Tung. At least some of these were registered in the names of family members with Mrs. Hsu and or Hsin-Tung retaining control over the properties.

Mrs. Hsu's language ability

- [22] As noted above, Mrs. Hsu spoke Taiwanese, which is a distinct language from both Mandarin and Cantonese. She received her schooling in Japanese, completing elementary school. Frank stated that she knew some Chinese characters but she could not read at the intermediate level. She could understand some basic Mandarin but not enough to understand Chinese television that was broadcast in Mandarin.
- [23] Frank stated that Mrs. Hsu could read Buddhist texts but not much else. She had been taught reading in Japanese and Chinese characters have different meanings in the Japanese language. He said that he had a good understanding of her reading ability because he helped her read Chinese newspapers. He said that she recognized about 400-500 Chinese characters. 1,200 characters is the level for elementary school and 5,000 characters is the level for high school.
- [24] Frank stated that Mrs. Hsu had no ability to read, speak or understand English at the time she immigrated. Following her immigration, she learned the alphabet but she was not able to speak or read English. He kept in very close contact with her over the years and had never heard her communicate in English. He also stated her ability to speak English did not improve.
- [25] Angela testified that Mrs. Hsu spoke Taiwanese and a little Mandarin. She knew basic words in Mandarin like "eat". Angela stated that Mrs. Hsu spoke no English. She could not speak or write in English and relied upon family members to communicate with the outside world.
- [26] Angela said she spoke some Taiwanese and elementary school level Mandarin. When she lived with Mrs. Hsu between ages 16 to 18, while her parents were both in Taiwan, she would call her mother in Taiwan to translate to ease any communication problems with her grandmother. Her grandmother never communicated with the public beyond basics such as "hello".
- [27] Angela stated that she never heard her grandmother communicating in Mandarin. She did not recall her reading Chinese newspapers or reading beyond Buddhist texts. She would watch Taiwanese shows on the television.
- [28] Dr. Lin stated that Mrs. Hsu had no ability to read, speak or understand English. When he spoke with her, he spoke in Taiwanese. Her oral and comprehension skills of Mandarin was not good and Mandarin had to be translated into Taiwanese for her to understand.
- [29] Henry stated that Mrs. Hsu spoke Taiwanese except for some greetings in Mandarin. Pearl stated that Mrs. Hsu could understand Mandarin sufficient to watch news on the television and to understand simple conversations. Mrs. Hsu could understand the price of things in Mandarin or Cantonese and understood a few words in English. When they went out Mrs. Hsu was dependent on Henry and Pearl to explain things for her.

- [30] Lih Wen said that he communicated with his grandmother in Taiwanese with some Mandarin. He recalled some moments when Mrs. Hsu spoke with others. She knew a few simple phrases in English, such as, "hello", "thank you" and the like.
- [31] Eric stated that he mostly spoke to Mrs. Hsu in Taiwanese supplemented with some words in Mandarin. He said that Mrs. Hsu had some ability to speak with store clerks in Mandarin and he would speak for her in Western stores.
- [32] It is common ground that when Mrs. Hsu was in Canada, she was always accompanied by someone who would interpret for her. After they immigrated to Canada, this was usually Henry or Pearl.
- [33] As will be noted below, Ms. Adrian, the solicitor who was retained in connection with the disputed transaction, suggests that she conversed with Mrs. Hsu in English. I am satisfied that she is mistaken in this regard. I find that Mrs. Hsu had no ability to speak or understand English beyond a few simple phrases.
- [34] In addition, I am satisfied that Mrs. Hsu's ability to speak and understand Mandarin was rudimentary, not sufficient to permit an understanding of legal documents.

Henry Yan-Yong Hsu and Chiu Chu Pearl Hsu

- [35] Henry was born on September 28, 1958 in Taiwan. He did his military service for two years following high school graduation. He then attended university in Taipei from 1980 to 1986 studying finance. He stated that he attended night school and worked during the day.
- [36] Prior to his marriage to Pearl, Henry lived in an apartment with Chun-Yen. He married Pearl in 1987.
- [37] There is some conflict in the evidence concerning Henry and Pearl's occupations in Taiwan. Frank testified that Henry was 30 years old when he graduated from university. It was his evidence that prior to immigrating to Canada, Henry was employed as a sales manager in a toy store and had a modest salary. Pearl was employed at the same company.
- [38] Henry and Pearl denied that they worked at the toy store. They stated that they were registered as employees at the company in order to obtain health care benefits from that company, which was owned by a relative. However, Henry's National Identification Card, a document issued by the government of Taiwan, shows his occupation as sales manager. Henry declined to produce his income tax returns of immigration file in the litigation. Pearl's card also showed her employed at the toy company.
- [39] Pearl qualified as a land registry agent in 1993 or 1994. Henry testified that nevertheless she had worked as a land registry agent since 1986 or 1987.
- [40] In 1993, Pearl passed her qualification exam to practice as a land registration agent. Between 1993 and 1995 Henry assisted her in this work.

- [41] This conflict in the evidence appears somewhat relevant to an issue relating to the purchase of three apartments located at Chaozhou Street in Taipei, Taiwan. Frank testified that Mrs. Hsu purchased these units and registered them in family member's names. It was his evidence that Henry, having just graduated and earning a modest income at the toy store, could not have purchased the units with his own funds.
- [42] Henry and Pearl testified that Henry purchased them with his own funds obtained through land registry agent work. Documentary evidence which could resolve this issue is not in evidence in this proceeding.

Lih Wen Hsu

- [43] Lih Wen is the son of Henry and Pearl. He was born in 1990 in Taiwan. He lived in Vancouver "off and on" from 1993 and immigrated in 1995. Between 1993 and 1995 he lived with Cher, her children Angela and Teddy, and Mrs. Hsu in Vancouver. Sometimes Eric and Kate also lived with them at his aunt's and sometimes other cousins from Taiwan lived there with them.
- [44] Lih Wen said that he was very close to Mrs. Hsu. He said that her health gradually deteriorated over time and he was involved in caring for her physical needs.

Chun-Yen Hsu and Frank Jen

- [45] Chun-Yen is a retired high school art teacher. Chun-Yen maintained a close relationship with her mother both before and after her immigration to Canada and when she returned to Taiwan in 2013.
- [46] Frank is married to daughter Chun-Yen. He taught English after graduation and then started making investments.
- [47] Frank stated that his parents had died and he was alone when he married. Mrs. Hsu treated him as her own son, and likewise, he treated her like his own mother. He stated that she provided financial support to him when he purchased his apartment and provided funds when he made his first investments. Frank testified that he had come from a poor family and wanted to learn about investing, and Mrs. Hsu provided him with valuable guidance
- [48] Mrs. Hsu entrusted her shares and bank account to him when she immigrated to Canada. Mrs. Hsu appointed him as one of her executors in the 2013 Taiwan will. He has skill in English and assisted Mrs. Hsu interpreting documents that were provided from British Columbia in relation to this matter. Mrs. Hsu asked him to help her to recover the McMaster Property.

Dr. Jung Tsung Lin

- [49] Dr. Lin was married to eldest daughter Cher and is father to Angela and Teddy. Their family was the first to immigrate to Vancouver. Dr. Lin maintained his practice at his own hospital in Kaohsiung, Taiwan. He monitored Mrs. Hsu's health and provided her medical care after she returned to Taiwan in 2013.

Angela Lin

- [50] Ms. Lin was born in Taipei in 1975 to Mrs. Hsu's oldest daughter Cher. Her brother is Yi-Hsiang Lin (Teddy). Ms. Lin is married with two children. She is an orthodontist, her husband is a radiologist, and they live in Boston.
- [51] Ms. Lin immigrated to Canada when she was 13 years old and attended University-Hill Secondary School. At that time, she lived in Vancouver with her mother and brother while her father continued his work in Taiwan.
- [52] She stated that between ages 13 and 16, Mrs. Hsu would come to visit and stay with them for lengthy periods. Then, when Angela got her driver's licence at age 16 her mother began to spend considerable time in Taiwan and Mrs. Hsu lived with them to take care of Angela and her brother until they moved away from Vancouver to attend university.
- [53] Angela stated that she had a very close relationship with Mrs. Hsu. Her mother was the favorite daughter and she was the favorite granddaughter.
- [54] When she left Vancouver to go to university, she would come back to Vancouver during holidays and summer break and spent a lot of time with her grandmother.

Chien-Ming Hsu

- [55] Chien-Ming described property that was given to family members prior to his father's death being Units 5,6, and 9 in Alley 4. He stated that Unit 5 was given to Henry and Unit 6 was given to Te-Yung. Later on, this unit was transferred to his wife, Ruei Yu Fang in 1992. Unit 9 was registered in Mrs. Hsu's name.
- [56] He stated that Henry received money from his parents in exchange for his interest in Unit 5. He used these funds to purchase the Hangzhou Property. Unit 5 was subsequently transferred to Chien-Ming's son.
- [57] Chien-Ming testified that at a later date he wanted to buy Unit 9 and it was ultimately transferred to his son Eric. He stated that he purchased this unit from his mother and registered it in his son's name. The purchase price was paid out over time.

- [58] Chien-Ming confirmed that he has close relations with Henry and Pearl. Henry assisted him with satisfying the requirements for immigration to Canada. Eric and Kate lived with Henry and his family. Henry has said that he intends to purchase a vehicle for Chien-Ming but he has not received it yet.
- [59] Chien-Ming testified that in 2013, he borrowed NT \$6 million from Henry. The funds were for Eric to purchase a bigger home in Vancouver. There are no documents evidencing the debt and no terms of repayment. He stated that maybe in the future it will be returned.
- [60] He stated that Henry told him that he owed money to Mrs. Hsu. Mrs. Hsu never said anything about such a loan.
- [61] No sales agreements or contracts for purchase were produced with respect to the transfer of Lot 9 to Eric. Chien-Ming stated that he paid NT \$8 million to Mrs. Hsu for the property. However, it was his evidence that as of 1995 the amount was paid in full, and as of 1995 he was not indebted to Mrs. Hsu.

Eric C.Y. Hsu

- [62] Eric is the youngest of the three children of Chien-Ming Hsu. He was born in 1981 and came to Canada at age 15 in 1996. He lived with Henry and his family from 1996 to 2003. His sister Kate also lived with Henry's family from 1996 until she returned to Taiwan in around 2000.
- [63] Eric stated that Henry and Pearl are second parents to him. He is very close to Lih Wen, who is like a brother to him and they still socialize at least once or twice a week.
- [64] Eric stated that while he and Kate lived with Henry's family, his father paid for their expenses. The funds would be sent to Kate's account and then passed on to Henry who would pay for expenses.

Kate Hsu

- [65] Kate is the daughter of the eldest brother, Chien-Ming. She stated that she lived in Canada from 1993 to 2000. From 1993 to 1995 she lived with Cher and Mrs. Hsu at Cher's house with her cousins Angela and Teddy. From 1995 until her return to Taiwan, she lived with Henry's family.

Professionals

James and Sophia Cummings

- [66] Mr. Cummings was called to the bar in 1988. He is still a member of the bar but substantially retired in 2019. He stated that in the period of 1997 to 1999, he worked in the same office as his then spouse, Sophia, who is an immigration consultant. In the 1997 to 1999 period, Ms. Cummings also worked as the office manager in the practice and assisted with interpretation. The firm also employed a conveyancing paralegal who was fluent in Taiwanese. They parted professional ways with in 2004. Sophia worked out of the same

office until 2006.

- [67] Mr. Cummings is fluent in Mandarin and English. Ms. Cummings is fluent in Taiwanese, Mandarin and English. The firm was retained in relation to the conveyance of the McMaster Property, and Mrs. Hsu's 1999 will.
- [68] He has no present recollection of matters to do with the transactions in which he acted for Mrs. Hsu apart from his review of the documents.
- [69] Sophia Cummings has met Mrs. Hsu and is acquainted with Henry and Pearl. She does not believe that she was involved in the 1997 conveyance. The firm employed a Taiwanese-speaking conveyancing paralegal at the time.
- [70] She does recall being involved in obtaining instructions for the 1999 will. She recalled that Mrs. Hsu said that she was bequeathing the home to Henry and Pearl because they had put something down on it and had been treating her well. Mrs. Hsu was grateful. Ms. Cummings translated the provisions for Mrs. Hsu and she agreed that Mrs. Hsu did not say that she wanted to put them on title at that time.
- [71] She had no recollection of any communication from Mrs. Hsu that it was important to have Henry's contribution to the property noted and recorded. If Mrs. Hsu had said that to her, she would have informed Mr. Cummings.
- [72] She had no recollection of receiving a call from Henry or Pearl asking about retaining Mr. Cummings for legal work in 2009.

Mo Wei Tsang

- [73] Ms. Tsang immigrated to Canada in 1970. She has been a licensed real estate agent with Sutton Realty since 2009.
- [74] Ms. Tsang's native dialect is Cantonese. She learned Mandarin in high school in Hong Kong and also speaks Haka. She speaks only a few words in Taiwanese and cannot understand the dialect.
- [75] Ms. Tsang met Henry in late 1999 or early 2000 when he came into a gift shop she owns in Vancouver. He later came to the shop several times, sometimes with his son Lih Wen. She met Pearl later on and Mrs. Hsu much later.
- [76] Ms. Tsang said that she had no social or professional relationship with Mrs. Hsu and Mrs. Hsu never came to her shop. Ms. Tsang testified that she had few conversations with Mrs. Hsu, none of them significant or substantial. She said that she would greet Mrs. Hsu in Mandarin and she does not recall Mrs. Hsu responding in Mandarin. She said that if Mrs. Hsu spoke to her in Taiwanese, she would not understand. On the occasions when they were together, Pearl would translate.

- [77] Ms. Tsang acted as a realtor for Henry when she sold his home and later acted in relation to the sale of one of the brother's condominiums. She had met Angela and possibly Angela's mother. Her interactions were limited to Henry and Pearl.
- [78] Ms. Tsang assisted in retaining Ms. Adrian in relation to the transaction at issue in this litigation. She also attended the two meetings with Ms. Adrian and members of the Hsu family.

Anne Adrian

- [79] Ms. Adrian was called to the bar in 1981 and her practice primarily consisted of real estate with some estate and wills work. In February 2009, she had transferred her shares in her partnership and was in the process of winding down her practice to commence retirement.
- [80] Ms. Tsang had referred perhaps 20-30 clients to Ms. Adrian since they first met in 2003. Ms. Adrian understood that Ms. Tsang was fluent in English and Cantonese and knew some Mandarin. Ms. Adrian did not speak Mandarin, Cantonese, or Taiwanese.
- [81] It was their practice for Ms. Tsang to come to the appointments with clients she had referred to make introductions and to provide any necessary assistance with translation.

Dr. Yann-Yong Hsiao

- [82] Dr. Hsiao was Mrs. Hsu's physician from 1997 until February 2013. He speaks Taiwanese. He stated that throughout this period, Mrs. Hsu had high blood pressure, high cholesterol, and diabetes, but was otherwise healthy.
- [83] He stated that Henry and Pearl always accompanied Mrs. Hsu on her visits to him. He would converse with her in Mandarin and Taiwanese. He believed that Mrs. Hsu understood him. Mrs. Hsu spoke to him in Taiwanese. He believed that she had an elementary school level education.
- [84] He described Mrs. Hsu as being very clear and well organized. His observation was that Mrs. Hsu, Henry, and Pearl had good relations. Henry and Pearl were very involved with her care.
- [85] He stated that Mrs. Hsu suffered a fall on a return from Taiwan in 2008 and thereafter, needed a wheelchair. Her health started to deteriorate but her personality stayed the same.
- [86] He recommended home care assistance after 2009 to assist with Mrs. Hsu's care given her mobility problems.
- [87] Dr. Hsiao stated that during the time he treated Mrs. Hsu, he had no concern about her mental capabilities. In his observation she was capable of making her own decisions. He had no notes in his file of Henry or Pearl raising any concern about memory issues. He never performed any mental capability tests.

Chronology

Acquisition of the Hangzhou Property

- [88] In 1986, Mrs. Hsu and her husband purchased a residential apartment at 3F, No. 107, Section 2 Hangzhou, South Road, Da'an District, Taipei City, Taiwan (the "Hangzhou Property").
- [89] The Hangzhou Property was registered in Henry's name. It was initially occupied by Chun-Yen and Frank; after Henry and Pearl's marriage, they also moved in. Mrs. Hsu also lived in the apartment for a considerable period.
- [90] There is a conflict in the evidence with respect to the beneficial ownership of this property. Henry asserts that he was both the registered and beneficial owner. Pearl's evidence is to the same effect. The plaintiff claims that Mrs. Hsu was the beneficial owner. The question of ownership emerges later in the chronology as a dispute over who was entitled to the proceeds of sale of the unit.
- [91] Chun-Yen testified that her parents purchased two properties in Taipei. The first was used for family members to stay in while they were at university. The second was purchased to make her husband's commute easier. This was purchased by her parents and registered in Henry's name. Henry did not pay anything toward the purchase of this property. Frank testified that in 1995, there was a property registered in Henry's name purchased by Mrs. Hsu and her husband.
- [92] The Hangzhou Property was an apartment in Taipei City. It was close to Frank's workplace. It was purchased by Mrs. Hsu and her husband and registered in Henry's name for tax purposes. Frank lived there for two years rent-free. Henry was a student at this time.
- [93] After Frank moved out, Henry and Pearl moved in. They lived there for about two years and then moved to the other property that the parents had purchased. After they moved out of the Hangzhou Property, it was rented out and Frank managed the rental for Henry.
- [94] There had been an earlier apartment acquired by the parents for the eldest sister and her family. That apartment was later given to Frank's wife, Henry and the youngest son to live in while they went to school. After graduation it was sold and the funds used by the parents to buy another property.
- [95] Henry testified that the three brothers had received gifts of property in Toucheng Township during their father's lifetime. His gift was No. 5 West 4 Alley, Toucheng Township, Yilan County. It was his evidence that he transferred his interest in that property in exchange for the Hangzhou Property.
- [96] As noted the plaintiff's evidence is to the contrary. Chun-Yen stated that Mrs. Hsu kept the Hangzhou Property for herself to secure for her old age.
- [97] Documentary evidence to determine the issue are not in evidence. For example, documents evidencing a transfer of title by Henry of any Toucheng property are not in evidence.

Living Arrangements in Taiwan

[98] Mrs. Hsu spent much of her time living with Henry and his family in Taiwan. After Henry's marriage, Henry, Pearl, Mrs. Hsu, Chien-Ming and his eldest son lived in the third-floor apartment. At some point Chun-Yen and Frank also were living there. Rooms for Mrs. Hsu were maintained in the homes of her other children but Mrs. Hsu spent most of her time living with Henry and Pearl.

Mrs. Hsu's first trips to Vancouver

[99] Commencing in 1989, Mrs. Hsu spent time in Vancouver. Cher and Dr. Lin together with their children Angela and Teddy immigrated to Canada. Dr. Lin retained his medical practice in Taiwan and Cher spent considerable time with him in Taiwan. Mrs. Hsu came to Vancouver to visit and also to take care of Angela and Teddy when their parents were not in Vancouver. When Pearl was studying for her notary exams in 1993-1994, Mrs. Hsu brought Lih Wen to live with Angela and Teddy in Vancouver to give Pearl more time to study.

[100] Mrs. Hsu loved Vancouver. She decided to immigrate and encouraged all of her children and their families to do so. She found it to be a beautiful city, in addition, she believed that Canada would be a safe haven for her family in the event of political trouble in Taiwan.

Purchase of Chaozhou Units

[101] In 1990, three apartments on the 3rd, 5th and 6th floors, in a new building located at No. 2 Lane 48, Chaozhou Street, Da'an District, Taipei City, Taiwan (the "Chaozhou Units") were purchased as pre-built sales for approximately NT \$30 million.

[102] There is a conflict in the evidence with respect to the purchase and beneficial ownership of these units. Frank asserts that these units were purchased by Mrs. Hsu and her husband. Henry claims that he purchased all three units with his own financial resources and Pearl's evidence is to the same effect.

[103] The 3rd floor unit was sold prior to completion. Henry asserts that he sold it and earned a profit. Frank asserts that Mrs. Hsu sold it.

[104] The 5th floor unit was registered in the name of Mrs. Hsu and Te-Yung and occupied by Te-Yung. Henry asserts that he sold this unit to his mother prior to completion, earning a profit which he took in the form of shares which were ultimately sold by Frank and the proceeds remitted to Canada.

[105] The 6th floor unit was registered in the name of Henry and Pearl and occupied by Mrs. Hsu and Henry's family. When Henry immigrated to Canada the 6th floor unit was sold to Chun-Yen for NT\$16 million (\$800,000 CDN) at Mrs. Hsu's request.

- [106] Chun-Yen stated that Henry never said he had purchased the 6th floor unit himself. She said it was not possible because he had just graduated from university and did not have the necessary funds. In addition, he never said that he acquired the 5th and 6th floor units as investments.
- [107] Chun-Yen stated that her parents purchased units on the 6th, 5th and 3rd floor. Frank's evidence was also to the same effect. The units were purchased at the pre-built stage in 1990 at a price of NT\$10 million each. The 6th floor unit was registered in Henry's name, the 5th floor unit was registered in the name of Mrs. Hsu and Te-Yung and the 3rd floor unit, which had been purchased by Cher, was sold prior to completion of the building.
- [108] Frank testified that Mrs. Hsu stated that she had paid for the three units. Henry never stated that he had paid. Frank stated that when Henry immigrated, the apartment was sold to his wife. The reason was because Mrs. Hsu thought it was an excellent investment and she wanted it to stay in the family. The proceeds of the sale of the 6th floor unit were given to Henry to use to acquire the 11th Avenue Property in Vancouver.
- [109] There is no documentary evidence to substantiate Henry's claim that he paid for the units with his own funds. There are no tax returns, asset statements or evidence of his earnings, and no mortgage documents. In cross-examination of Frank, a bank book from the Cooperative Bank of Taiwan was produced. The suggestion was that there were sufficient funds in the account to purchase the units. However, Henry did not give evidence about this bank book. He never testified that the funds in the account were his, nor did he deny Frank's evidence that the funds were from his parents transferred to him to purchase the Chaozhou Units.

Mr. Hsu's death

- [110] Mr. Hsu died without a will in 1991. Following his death, Mrs. Hsu gave certain properties to her sons. She later sold one property of small value that she had purchased and registered in the name of her eldest daughter-in-law. She gave the proceeds to her three daughters.
- [111] Frank and Chun-Yen testified that when the father-in law-died without leaving a will, Mrs. Hsu distributed the father's estate in a way she deemed fair. The oldest son received the property and the business in the hometown, Toucheng Township, Yilan County. There were two properties in Taipei City that were roughly equal in value. The 5th floor unit, was given to the youngest brother. The 6th floor unit was given to Henry. The daughters did not receive a share.
- [112] As with the evidence in relation to other properties, while there is agreement that each of the surviving sons received some property, there is some conflict in the evidence with respect to which properties were distributed as part of the father's estate. Documentary evidence which could resolve this issue has not been placed in evidence in this proceeding.

- [113] There were a number of shares registered in Mrs. Hsu's name. She distributed half of those to the three sons and their wives. The shares were an electronic company that the second brother-in-law had started. She invested NT \$1 million which eventually were worth NT \$50 million.
- [114] Chun-Yen stated that Mrs. Hsu had a smaller property that she sold for NT \$1.5 million, giving one third to each of her daughters. The property was purchased by her parents and had been registered in the name of Chien-Ming's wife.
- [115] Chun-Yen stated that the daughters did not complain that the distribution of their father's estate was unfair. She said that the sisters had good lives. Their husbands were doing well and they had financial security.

Decision to Immigrate

- [116] In 1994, Henry and Pearl came to Vancouver to visit. Mrs. Hsu had fallen in love with Vancouver, which she described as "heaven on earth". Henry and Pearl applied to immigrate under the skilled workers category.
- [117] In 1994, Frank and Chun-Yen came to Vancouver to visit. Mrs. Hsu encouraged them to immigrate. Frank had the intention to immigrate initially, but was concerned about his ability to earn money in Vancouver and ultimately, did not take steps to immigrate.
- [118] Henry and his family immigrated to Canada in 1995 at Mrs. Hsu's request and they also sponsored Mrs. Hsu's immigration.
- [119] Chien-Ming commenced an application to immigrate applying under the entrepreneur category. His two children, Eric and Kate, studied in Vancouver and lived with Henry and Mrs. Hsu. In the result, Chien-Ming, although approved for immigration, remained in Taiwan. The rest of Mrs. Hsu's family remained in Taiwan.
- [120] After Henry and Mrs. Hsu immigrated to Canada, Frank managed some investments and bank accounts for them at their request. The Hangzhou Property was rented out and Frank managed the rental. The rental income was deposited in an account at Taipei Fubon Bank registered in Henry's name.
- [121] There is a conflict in the evidence with respect to the use of this rental income. Frank testified that Mrs. Hsu used the funds for her expenses when she travelled to Taiwan after immigrating. Henry denied that Mrs. Hsu used those funds.
- [122] Frank testified that he managed only some of Mrs. Hsu's funds in Taiwan. Te-Yung managed some of her investments.

The 11th Avenue Property

- [123] Henry and Pearl purchased a property at 4562 West 11th Avenue, Vancouver on August 24, 1995 (the "11th Avenue Property") for \$654,205 CDN one to two months after immigrating. They used the proceeds from the sale of the 6th floor unit to finance the purchase. Mrs. Hsu moved in with the family, together with Chien-Ming's children Eric and Kate. In addition, they took in homestay students to earn income.
- [124] The 11th Avenue Property was sold in 2003 for \$706,000 CDN and another rental property on West 42nd Avenue was purchased with a portion of the proceeds of sale.

Funds Transferred from Taiwan to Canada in 1997

- [125] Henry and A-Tui each held bank accounts located at the Cathay Bank in Taiwan, which were left under the control and direction of Frank when each of them immigrated to Canada. Henry held an account ("Henry's Cathay Bank Account") and A-Tui held an account ("A-Tui's Cathay Bank Account").
- [126] Henry also held an account at the Royal Bank of Canada ("Henry's RBC Account").
- [127] In the spring of 1997, the following withdrawals and deposits were made from Henry and A-Tui's accounts:
- a) On February 21, 1997, NT \$6,000,000 was withdrawn from Henry's Cathay Bank Account;
 - b) On March 3, 1997, NT \$7,000,000 was withdrawn from Kate Hsu's RBC account;
 - c) On March 3, 1997, NT \$10,000,000 was withdrawn from A-Tui's Cathay Bank Account;
 - d) On March 4, 1997, \$843,852.07 CDN was deposited into Henry's RBC Account. The Chinese notation FTCT on the RBC passbook for Henry's RBC Account in English is translated to "remitted from Taipei";
 - e) On March 6, 1997, \$534,487 CDN was withdrawn from Henry's RBC Account. The Chinese notation on the RBC passbook for Henry's RBC Account in English is translated to "to mom's account 5032560";
 - f) On April 23, 1997, NT \$5,000,000 was withdrawn from Henry's Cathay Bank Account;
 - g) On April 23, 1997, NT \$10,000,000 was withdrawn from A-Tui's Cathay Bank Account;
 - h) On April 23, 1997, \$1,008,542.61 CDN was deposited into Henry's RBC Account; and
 - i) On April 30, 1997, \$950,000 CDN was withdrawn from Henry's RBC Account.

The Tolmie Property

- [128] In September 1995, Lian Cheng Investments Co. Ltd. was incorporated ("Lian Cheng"). Henry and Chien-Ming were the shareholders. The company was incorporated in connection with Chien-Ming's application for immigration.
- [129] On January 2, 1997, Lian Cheng entered into a contract of purchase and sale to purchase a property located at 2570 Tolmie Street, Vancouver for \$205,000 (the "Tolmie Property"). The sale was subject to court approval which was ultimately granted and the sale closed on February 28, 1997.
- [130] There is a conflict in the evidence with respect to the source of funds for the purchase of the Tolmie Property as will be discussed at greater length below.
- [131] After Henry immigrated, Frank was managing his shares, rental income and certain bank accounts for Henry. Frank testified that Henry instructed him to sell shares in Taiwan and forward the proceeds to Canada for the purpose of acquiring Tolmie. At one point in his testimony Henry said he used his funds to purchase Tolmie, specifically the NT \$6 million forwarded from Taiwan from the sale of shares. He stated that the NT \$6 million was his money.
- [132] However, Henry also testified both that his eldest brother contributed to the purchase of Tolmie with a transfer of funds deposited into Kate's account.
- [133] It appears clear from the evidence that Chien-Ming forwarded substantial sums for the expenses of Eric and Kate during the time that they resided with Henry. Chien-Ming stated that he put out \$400,000 CDN to assist with the purchase of Tolmie. He stated that it was remitted gradually. He cannot recall which account it went to. The funds were used to buy the property, and inventory. However, he also stated that he had not reviewed any records prior to testifying and that he believes this was the amount transferred because Henry told him.
- [134] Kate testified that during the time she lived with Henry's family, her father would forward sums to her account. In 1997, there was a deposit of \$390,000 CDN. She said that her father told her that \$180,000 was to cover living expenses and \$200,000 was to be given to Henry for the immigration application. She agreed that she had not reviewed her passbook from 2000 to close to today. She has no independent recollection of these matters. Her recollection comes from what she was told.
- [135] Henry operated a toy store at Tolmie for several years, however, the business failed and it was rented out. From age 45, Henry had no income from employment.
- [136] Lian Cheng sold Tolmie on June 24, 2019 for \$668,000 CDN. Henry's evidence was that after the sale, all of the shares were transferred to him and he took all of the proceeds of sale. At one point in his testimony, Henry said that the reason he took 100 percent of the proceeds is because he used his funds to purchase Tolmie.

[137] Chien-Ming testified that he does not know if he is entitled to any of the proceeds of sale. He also stated that he did not receive any of the proceeds of the sale of the Tolmie property despite being a 70 percent shareholder because Henry looked after his children, so he never thought to take any of the share benefit.

Frank is Instructed to sell shares for Mrs. Hsu and Henry

[138] From 1996 to 1997 at Mrs. Hsu and Henry's instruction, Frank sold Taiwan company shares for Mrs. Hsu and Henry deposited the proceeds into their respective Cathay bank accounts. Frank testified that he received NT \$25 million for Mrs. Hsu's shares and NT \$18 million for Frank's shares.

[139] Frank also made three withdrawals from Henry's accounts totalling NT \$18 million and sent these monies to Henry in Canada:

- a) February 21, 1997 - NT \$6 million;
- b) March 3, 1997 - NT \$7 million; and
- c) April 23, 1997 - NT \$5 million.

[140] Frank testified that Henry gave him instructions to withdraw the NT \$6 million on February 21 from Henry's account and that Mrs. Hsu gave him instructions for the March 3 and April 23 withdrawals from Henry's accounts.

[141] Upon Mrs. Hsu's instructions, Frank also made two withdrawals from Mrs. Hsu's Account on March 3, 1997 and April 23, 1997 of NT \$10 million on each occasion which were to be sent to Vancouver. Frank was told by Mrs. Hsu that she would use the funds to buy a property in Vancouver. Mrs. Hsu's monies were sent to Henry's RBC account because Mrs. Hsu could not deal with the banking given her English language incapability.

[142] Frank testified that in 1996, he received instructions from Mrs. Hsu to commence disposing of her shares in Taiwan to use to purchase real estate in Vancouver. He started to do so in October 1996 and all the shares were sold by April 1997. The sales reached NT \$25 million and Frank remitted two transfers of NT \$10 million to Mrs. Hsu at a value of approximately \$1.9 million CDN.

[143] Frank testified that during the same period, Henry instructed him dispose of shares. These sales realized NT \$18 million or approximately \$900,000 CDN. Frank testified that Henry told him that he needed the funds to purchase a property on Tolmie Street in Vancouver. The funds were withdrawn on February 21, 1997 and sent to Henry.

[144] In February 1997, Frank remitted NT \$6 million to Henry's account in Canada. The amount was remitted directly. There were two subsequent remittances of NT \$7 million and NT \$5 million to Henry.

- [145] Frank stated that he made addition withdrawals on March 3, 1997 and April 23, 1997. By the end of April, he had sold all of the shares registered in Henry's name.
- [146] Frank testified that Mrs. Hsu instructed him in March 1997 that she was going to purchase a property near UBC but the price had yet to be negotiated. The proceeds of the sale of her shares was going to be used to purchase McMaster. Frank testified that neither Mrs. Hsu nor Henry said that Henry's money was to be used for the purchase of the McMaster Property. Mrs. Hsu said that her funds were to be used to make the purchase.
- [147] Frank testified that after he sold the shares, he forwarded the funds to Mrs. Hsu through Cher's account. Cher then forwarded the funds to Henry, who was assisting Mrs. Hsu with the purchase.
- [148] In addition, Mrs. Hsu instructed Frank to forward NT \$7 million from Henry's account to Henry. She did not say what use would be made of those funds. She did specify that the NT \$20 million from her account was to be used to purchase the real estate.

Purchase of the McMaster Property

Source of the Purchase Funds

- [149] Chun-Yen testified that Mrs. Hsu told her that she wanted to purchase a property. She had invested in stocks and felt that it was a good time to sell her shares to purchase real estate in Vancouver. She said that Mrs. Hsu told her that the 11th Avenue Property could be rented out, providing income for Henry. This was a good thing because he did not have a job and did not make much money.
- [150] Chun-Yen stated that Henry never referred to the McMaster Property as his home. He referred to the McMaster Property as his mother's house and 11th Avenue as his.
- [151] Chun-Yen stated that Mrs. Hsu told her that if Henry and Pearl cared for her for the rest of her life and never sent her to a care home, when she died she would leave the McMaster Property to them. She said that Mrs. Hsu expressed this to many family members.
- [152] Frank testified that in 1996, Mrs. Hsu decided to buy a house for herself in Vancouver. Since immigrating, she had been living with Henry and his family in a house that Henry had purchased on West 11th Avenue.
- [153] Frank stated that Mrs. Hsu told him that she used her own funds (without contribution from anyone else) for the purchase of the McMaster Property. Henry never stated anything to the contrary. Because his family lived with Mrs. Hsu in the McMaster Property, Henry was able to rent out the 11th Avenue Property.

- [154] Frank stated that Mrs. Hsu told him that she was assisting Henry and his family because it was not easy for Henry to make money in Canada. He stated that she told him that if Henry took care of her for the rest of her life, she would bequeath the McMaster Property to Henry and his family.
- [155] Dr. Lin stated that he and his wife found the McMaster Property when they were with Mrs. Hsu. He said Mrs. Hsu purchased the property with her own funds that had been sent from Taiwan. He said that Henry never said that he had contributed funds to the purchase. He stated that he knew that the funds were Mrs. Hsu's because Mrs. Hsu's funds were remitted from Taiwan through his wife who then forwarded them to Henry to use for the purchase.
- [156] Angela testified that in the family, the McMaster Property was always known as Mrs. Hsu's house and it was her understanding that Mrs. Hsu had purchased it. The home was never referred to a shared property with Henry. She said that her mother had assisted in transferring money to Mrs. Hsu from Taiwan for the purchase.
- [157] Lih Wen stated that no one ever told him that Henry had paid for half of the McMaster Property. Neither his father nor Mrs. Hsu had ever said this to him.
- [158] Henry gave several versions with respect to the funding of the purchase of the McMaster Property:
- a) In chief he stated that at his direction, Frank sold stocks in Taiwan, netting NT \$18 million or approximately \$900,000 CDN. He used these funds to purchase the McMaster property. He repeated this evidence in cross examination.
 - b) He stated that Mrs. Hsu requested Frank to open an account in his name in Vancouver. She deposited the NT \$20 million that Frank had forwarded to her through Cher's account into that account. Thus, he paid the whole of the purchase price with the proceeds from the sale of his stocks. He stated that Mrs. Hsu did not contribute funds to the purchase of the McMaster Property.
 - c) He stated that the property was registered in Mrs. Hsu's name because:
 - i. He already had a property at West 11th Avenue;
 - ii. He discussed this with Cher and she agreed that it was a good idea;
 - iii. Mrs. Hsu had contributed a lot to them in their lifetime; and
 - iv. He had the ability to do it and it would make Mrs. Hsu very happy.
 - d) Henry stated on examination for discovery that he paid for the McMaster Property. All of the money for the purchase came from his account, remitted from Taiwan. All these funds were his because it would never be the case that someone else's funds would be put in his account.

- e) In an affidavit sworn September 26, 2017, Henry swore that Mrs. Hsu gave him NT \$8 million to his account in Taiwan and he arranged for \$1,000,000 CDN to be transferred to pay for the McMaster Property. Then in cross-examination when asked into which account of these funds were placed, he responded that the money was sent by his eldest brother, Chien-Ming.
 - f) Henry testified in direct that Mrs. Hsu had wanted to pay for half of the price. The money was to come from the NT \$8 million that Chien-Ming was supposed to send to her. However, in the end she did not contribute because Chien-Ming did not provide the funds that he was supposed to. All of her funds were deposited into her account.
 - g) Henry also testified on examination for discovery that Mrs. Hsu loaned him \$400,000 to help him finance his share of the purchase of the McMaster Property. However, at one stage in cross-examination he denied that this was a loan. Later in cross-examination he testified that Mrs. Hsu loaned him \$400,000 CDN to help him put up half of the purchase price of McMaster. She got the \$400,000 from Chien-Ming. These were the funds sent by Chien-Ming to Kate in February 1997. However, he also stated that \$180,000 of those funds was for the children's expenses and \$200,000 was for the purchase of the Tolmie Property. He also testified both that Mrs. Hsu put up \$400,000 into the purchase price and that he never received those funds.
- [159] Henry stated that Mrs. Hsu told Sophia Cummings at the time of the conveyance that she and Henry had jointly paid for the property. He stated that he heard Mrs. Hsu tell Sophia Cummings this and that she told her to make sure that Mr. Cummings recorded that fact. Pearl's evidence was to the same effect.
- [160] As noted above, Ms. Cummings had no knowledge of any such conversation and stated that if she had been so instructed, she would have told Mr. Cummings.
- [161] Henry stated that in 1999, Pearl drove Mrs. Hsu and Cher to Mr. Cummings' office. Pearl did not go into the meeting but overheard Mrs. Hsu tell Sophia Cummings that Henry had put up half, and Mrs. Hsu had put up half of the purchase price of the McMaster Property.
- [162] Pearl stated that Mrs. Hsu told her that Henry paid for half of the purchase price. She knew that McMaster was registered in Mrs. Hsu's name. She said that she agreed with that because of all the hardships Mrs. Hsu had endured in her life. Pearl also stated that Mrs. Hsu told her children when they came to visit that Henry had paid for half the purchase price.
- [163] Pearl also stated that Mrs. Hsu would bring this up repeatedly for years after the purchase, during casual conversation she would bring up that Henry had paid half.
- [164] After the purchase of the McMaster Property, the whole family knew that the property was registered in Mrs. Hsu's name. Henry knew that Mrs. Hsu told people that it was her house.

The Conveyance

- [165] Mrs. Hsu entered into a contract for purchase on sale for the McMaster Property on April 3, 1997 for a total cost of \$873,611, which included a \$40,000 deposit. The sale closed on May 15, 1997. Henry issued a bank draft in the amount of \$831,922 at closing.
- [166] The conveyance was handled by a Mandarin-speaking lawyer, James Cummings. Sophia Cummings, who was at the time Mr. Cummings' spouse, worked in the office. Ms. Cummings spoke Taiwanese. At the time of the conveyance the office employed a Taiwanese speaking conveyancing paralegal. The reporting letter and documentation sent to Mrs. Hsu following the closing were written in Chinese.
- [167] Mrs. Hsu was the sole registered owner of the McMaster Property at the time of purchase.
- [168] Following the purchase, extensive renovations were undertaken. There is a conflict in the evidence with respect to the funding of the renovations. Henry asserts that he paid for all of the renovations, totalling \$200,000 CDN. Frank testified that Henry initially paid the invoices but then sought reimbursement from Mrs. Hsu. He testified that he witnessed Henry presenting invoices to Mrs. Hsu during a visit to Vancouver.
- [169] Following the purchase of McMaster, Henry and his family lived there with Mrs. Hsu. Henry rented out the 11th Avenue Property. In addition, he supplemented his income with one or more homestay students who lived at the McMaster Property. It is common ground that Henry paid for all of the expenses related to McMaster including taxes, insurance and utilities.

RBC Dominion Securities Account

- [170] Frank testified that at Henry's request, he opened an account in Vancouver at RBC Dominion Securities. The account was opened on July 21, 1997 ("Dominion Securities Account #1"). He stated that Henry told him he wanted to use the account to invest the proceeds of shares sold in Taiwan and sent to Henry through Cher. He said that Henry told him that later, in around 1998, Mrs. Hsu said that she was impressed with returns and wanted to invest some of her funds into that account.
- [171] Henry denied that any of his funds were invested in the account. At some point it appears that Te-Yung had funds in the account.
- [172] Frank gave both Henry and Mrs. Hsu a power of attorney with respect to the account. He had none of his own funds in the account. The statements were sent to the McMaster Property address. Frank did not have conduct of the account or knowledge of the funds within it.
- [173] There was another account opened in Frank's name. Frank stated that he was not aware of the account and he never received any instructions about the account.

- [174] By January 1, 2000, the Dominion Securities Account #1 held the sum of \$2,158,179.90.
- [175] On May 29, 2009, the Dominion Securities Account #1 had a total value of \$2,045,061.81.
- [176] In or about June 2009, Frank opened another RBC Dominion Securities Account (the "Dominion Securities Account #2").
- [177] On June 16, 2009, a total of \$1,245,333.71 was transferred from the Dominion Securities Account #1 to the Dominion Securities Account #2,
- [178] As of June 30, 2009, the Dominion Securities Account #1 had a total value of \$802,494.16.
- [179] On September 28, 2010, a total of \$1,345,644.77 was transferred from Dominion Securities Account #2 to another RBC Dominion Securities Account which completely defunded Dominion Securities Account #2.
- [180] Between April 30, 2013 and June 14, 2013, a total of \$446,000.00 was withdrawn from the Dominion Securities Account #1 on the following dates in the following amounts:
- a) \$186,000.00 on April 30, 2013;
 - b) \$280,000.00 on June 14, 2013;
 - c) The \$446,000.00 withdrawn from the Dominion Securities Account #1 was withdrawn by Frank for Mrs. Hsu and at her request; and
 - d) On or about June 14, 2013, Frank for Mrs. Hsu and at her request cancelled the bank power of attorney granted to Henry on the Dominion Securities Account #1.

1995-2008

- [181] Chun-Yen stated that in Taiwan, Henry had always been very obedient to his parents, however, that gradually changed after he immigrated. She said that Mrs. Hsu thought those changes were not serious. When she and Henry argued, Mrs. Hsu would come back to Taiwan for a period and live with Chun-Yen. When she was no longer angry she would return.
- [182] Henry and Pearl testified that the family lived in harmony.
- [183] Chun-Yen stated that during this period, Mrs. Hsu was strong. She had no mobility issues. She was able to help do the cooking, care for the house, and help with the children.
- [184] Chun-Yen stated that she recalls vividly that Mrs. Hsu would often say that after her death the McMaster Property would go to Henry if he took good care of her. She told her that she wanted to live out her life in Vancouver and did not want to go to a care home.
- [185] Pearl stated that as early as 1999, Mrs. Hsu told her that it was her intention in the future to give McMaster to Li Wen. She did not specify when this was to occur or whether it was to take place after her death.

Unsigned Form A Transfer

[186] There is an undated and unsigned Form A Transfer dated December 1998 for the McMaster Property to register Henry and Mrs. Hsu as joint tenants that was found in Mr. Cummings' files. No witness had any testimony to offer with respect to this document.

1999 Will

[187] On October 15, 1999, Mrs. Hsu made a will with James Cummings that left the McMaster Property to Henry and Pearl after her death (the "1999 Will"). There is conflicting evidence with respect to the creation of this will.

[188] Henry testified that Cher helped his mother with the will. He testified that he knew that Cher and his mother had gone to Mr. Cummings' office to do a will but he didn't know the contents. However, he also gave evidence in his examination for discovery that he did not know if Mrs. Hsu had made a will.

[189] Pearl testified that she drove Mrs. Hsu and Cher to the lawyer's office but did not go inside and knew nothing of the discussion of contents of the will.

[190] The instruction sheet forwarded from Mr. Cummings' office was faxed to Henry's home. It was his evidence that Cher used the fax machine at his home to complete the form.

[191] However, Cher travelled to and from Taiwan using her Taiwanese passport. It appears from this passport that she was in Taiwan, not Vancouver at the time of creation and execution of the 1999 Will, calling into question Henry and Pearl's account.

2008-2009

[192] In 2008, Cher was terminally ill. Mrs. Hsu travelled to Taiwan and stayed for several months to help care for her. She returned to Vancouver in early 2009. Immediately after her return, she learned that Cher had died.

[193] Frank denied that during this visit Mrs. Hsu told family members that when she returned to Vancouver she intended to hire a lawyer and transfer the McMaster Property to Lih Wen. He stated that Mrs. Hsu told him that she was thinking of transferring the property to Lih Wen on her death. Her stated intention was to arrange for the property to go to him after she passed, not to make a transfer. At this time everyone was concerned about the eldest sister who was critically ill. There was little discussion about Mrs. Hsu's assets.

[194] Chun-Yen stated that around the time of her eldest sister's death, Mrs. Hsu said that upon her death, the property might be given to Lih Wen. She said that she emphasized that this was on the condition that she must stay in the house until her death and never be sent to a care home. She said that Mrs. Hsu told her that she thought well of Lih Wen and that it was appropriate for assets to go to male descendants. She said that her conditions would need to be met for that to happen.

- [195] In his testimony at trial, Henry said that it was after she returned from Taiwan that Mrs. Hsu discussed her intentions to transfer the property to Lih Wen. However, on his examination for discovery, he had stated that Mrs. Hsu always had the intention to transfer.
- [196] Henry stated that after Mrs. Hsu returned from Taiwan and learned that Cher had died, she told him that she wanted to transfer the McMaster Property to her grandson Lih Wen while she was still capable. He said that she told him that she did not want a fight or grievance after her passing.
- [197] He stated that Mrs. Hsu told him that she wanted the whole title to go to Lih Wen. He also stated that Mrs. Hsu told him that if he died she wanted Lih Wen to get 100 percent of the title.
- [198] Pearl stated that Mrs. Hsu said that after Cher's death, Mrs. Hsu said that she needed to handle her real estate in her lifetime so that she would not leave any trouble with her descendants. She said that Mrs. Hsu told her that she wanted to transfer the McMaster Property to Lih Wen hoping that the house would be preserved in the family for a long time.
- [199] Chien-Ming stated that during this visit, Mrs. Hsu told him that she wanted to transfer the McMaster Property to Lih Wen, however, she did not provide any details. She never mentioned this later and never told him that she had taken any steps to effect a transfer.

2009 Retaining Anne Adrian

- [200] In early 2009, Henry and Pearl requested a realtor, Mo Wei Tsang, to recommend a lawyer. Ms. Tsang recommended Anne Adrian, who was at that time in the course of winding down her practice. There is some conflict in the evidence with respect to how this transpired.
- [201] Henry testified that at Mrs. Hsu's request, they contacted Sophia Cummings. He stated that Pearl placed the call and Mrs. Hsu spoke directly with Sophia. She told them that she was divorced from Mr. Cummings and it was not convenient for her to have him handle the matter. They then asked Ms. Tsang to introduce them to a lawyer.
- [202] Pearl testified that they called Sophia Cummings. She said that Mrs. Hsu told Ms. Cummings that she wanted to transfer McMaster to Lih Wen. Ms. Cummings talked about her divorce and said that she could not handle these matters. Pearl said Ms. Cummings advised that they go to Mr. Cummings directly. Pearl said that Mrs. Hsu did not like men who were not loyal to their relationships and so they did not contact Mr. Cummings.
- [203] Pearl testified that she placed the call to Ms. Tsang on speaker phone. Mrs. Hsu was present on the call. Pearl said that she spoke English to Ms. Tsang. She did not ask Ms. Tsang to recommend a specific lawyer. Ms. Tsang said Ms. Adrian did not speak Chinese and Mrs. Hsu said that did not matter.

- [204] Ms. Tsang testified that either Henry or Pearl asked her to recommend a lawyer for a transaction in relation to the McMaster Property. She did not speak with Mrs. Hsu about this request. She said that she was told by either Henry or Pearl, that Mrs. Hsu wanted to transfer the title to her grandson. She said that nothing specific was said to her about whether this transfer was to take place during her lifetime or only after her death. She knew at the time that Mrs. Hsu was the registered owner.
- [205] Ms. Tsang stated that she asked if they needed a Taiwanese-speaking lawyer and was told that they did not think it was necessary. Ms. Tsang did not know any lawyers who spoke Taiwanese.
- [206] Ms. Tsang recommended Anne Adrian, who was a lawyer that she had had many prior dealings with in relation to the purchase and sale of properties. It was Ms. Tsang's evidence that neither Henry nor Pearl asked her to recommend a Taiwanese-speaking lawyer.
- [207] Ms. Tsang believes that she made a call to introduce the matter to Ms. Adrian's office, however, she does not recall the details. She stated that before May 19, 2009, she did not have any conversation with Mrs. Hsu about this matter. It was her evidence that they could not converse because of a language barrier.

First Meeting

- [208] There was a meeting on May 19, 2009 (the "First Meeting") at Ms. Adrian's office. Ms. Tsang attended along with Henry, Pearl and Mrs. Hsu. Following that meeting, Ms. Adrian decided how to document and implement what she understood her instructions to be.
- [209] There is conflict in the evidence with respect to certain aspects of the First Meeting.

Ms. Adrian

- [210] Ms. Adrian testified that she believes that Ms. Tsang called her office and told her assistant to set up an appointment for a grandmother who wished to transfer property to her grandson. The note her assistant made indicated that Mrs. Hsu wanted to transfer to her grandson.
- [211] She stated that Mrs. Hsu, the grandmother was the person to see the lawyer. She was Ms. Adrian's client. Ms. Tsang attended to make introductions and Ms. Adrian recalled that Pearl translated for Mrs. Hsu.
- [212] She stated that she asked questions because of her concerns regarding risks. She asked about Mrs. Hsu's other assets, other children and the possibility of a dispute. She said that she was told that Mrs. Hsu had adequate assets to look after herself, that she had already provided for her other children, one third to each son. Ms. Adrian said that she raised the risk of having such a young person on title. If he got married it could cause a rift.

- [213] She claimed she said to Mrs. Hsu, "you are the owner" and Mrs. Hsu replied that Henry had paid half the purchase price, the intent was that they would share. She said she was told that the intent was to share from the time of purchase of the property. She said that she asked why Mrs. Hsu was on title. She understood that Henry already owned a house. In the end, she did not find out what was the reason that the property was only registered in Mrs. Hsu's name.
- [214] In cross-examination, Ms. Adrian did not agree that Mrs. Hsu told her that she wanted to give the property to her grandson. She said that Mrs. Hsu wanted to transfer it in gratitude to Henry for what he has done for her. It was Henry who wished to make a transfer to Lih Wen.
- [215] She stated that she has a clear recollection that from the outset, Mrs. Hsu said she wanted to transfer the property to Henry. On her examination for discovery, she stated that it was Henry who told her that Mrs. Hsu wanted the property to go to him as a gift. She stated during cross-examination that her discovery testimony in this regard was mistaken because she was confused at that time.
- [216] Ms. Adrian stated that she did not make any inquiries about a will because she was not retained to do an estate plan. She did not discuss any other options such as a life estate because this was a very narrow retainer. Also, Mrs. Hsu was very confident that her family relations would remain strong. Ms. Adrian had the impression that Mrs. Hsu totally depended on Henry for so many years. What she was proposing seemed reasonable to her given Mrs. Hsu's other resources and amicable relationship.
- [217] She was told that Henry owned a property worth one million dollars and this gave her additional comfort about the arrangement. There is a note in the file to this effect. The amount would appear to be an exaggeration since the 11th Avenue Property was sold for substantially less than one million and the replacement property cost much less than the sale proceeds.
- [218] Ms. Adrian recalled that it was Henry who wanted to transfer the property to Lih Wen. When told that this was Henry's wish, Mrs. Hsu said she would do what Henry wanted. Her attitude was that Henry's wishes would prevail. Ms. Adrian said that Mrs. Hsu said, "Do whatever he wants. Whatever he wants, I am in agreement." Therefore, structuring the transaction according to Henry's wish became her focus.
- [219] Ms. Adrian stated that she told Mrs. Hsu that once the property was transferred she would no longer have control. She said that Mrs. Hsu responded that this was not a concern to her because she was confident that Henry would look after her and it was to be an immediate gift.

- [220] With respect to the issue of care, Ms. Adrian said in her mind, care had two components. The first was physical. She asked Mrs. Hsu if she had adequate assets and she said she was well provided for. The second aspect was emotional, spiritual and psychological support. She felt that Henry and his family provided this care to Mrs. Hsu and she was treated with dignity. She said that Henry committed to providing that type of care to her. Mrs. Hsu was confident that this would continue.
- [221] Ms. Adrian stated that in her view it would be superfluous to document an agreement to provide such care. They were committed to making it work in the future. Moreover, such an agreement would be far beyond the scope of her retainer and she would not have undertaken it.
- [222] She said that she then asked Henry and Pearl to leave and had a discussion with Mrs. Hsu and Ms. Tsang. She said that she spoke in English and Ms. Tsang translated into Mandarin. Ms. Adrian would then ask Mrs. Hsu "do you understand?" and they would proceed. She said it was her perception that Mrs. Hsu understood English better than her ability to speak it. She would ask in English if she understood and asked Ms. Tsang to repeat in Mandarin and Mrs. Hsu would say "yes". She said that Mrs. Hsu never said she could not understand.
- [223] They went through everything that had been covered before. In addition, in this phase of the meeting, Ms. Adrian asked Mrs. Hsu about her relations with Pearl. She was assured that Mrs. Hsu was very fond of her daughter-in-law.
- [224] Ms. Adrian stated that in both the first and second parts of this meeting Mrs. Hsu said that she wanted to make a gift of the property, to transfer the property to Henry. She said that Mrs. Hsu never said that it was her intention to transfer the property to Lih Wen.
- [225] Ms. Adrian was asked if she ever asked Mrs. Hsu why if Henry paid for half, the title was only in Mrs. Hsu's name. She responded that she believes that it had to do with the fact that Henry owned another home. She stated that it was Henry who told her that.
- [226] She stated that she took from the serene and respectful atmosphere that Mrs. Hsu agreed and understood everything that she had been told in English. She relied on the integrity of the people at the meeting and her belief that Mrs. Hsu could understand some English.
- [227] Ms. Adrian stated that at the first meeting, she told Henry that he would need to get independent legal advice but he refused. She said that she does not recall if it occurred to her that Mrs. Hsu should get independent legal advice given that instructions were being given with the recipients in the room. She was not of the view that was necessary.
- [228] Ms. Adrian did not make recommendations at the first meeting with respect to the structure of the transaction or the documents to be prepared. She did not explain at this stage what she intended to draft.

- [229] After the meeting, Ms. Adrian considered how to structure the transaction. She decided that, if Henry owned one half, it was not appropriate to transfer the whole to the grandson. She decided that Henry's interest should be transparent and registered and that Mrs. Hsu could transfer her interest to her grandson. Then she made a declaration of trust with respect to Henry's half interest and a direction from Henry making a gift to his son.
- [230] Ms. Adrian said that she was worried about the risk of the transaction if the grandson was on title and wanted to sell, for example. She said that to her, Henry is the son and is the person at the center of the transaction. With a trust declaration he would still be in control. So, she prepared a trust whereby Henry would be the beneficial owner of Lih Wen's interest. She said that she was confident that Henry would look after Mrs. Hsu. He acknowledged that he would look after his mother. She stated that the risk she was considering was the risk to Henry and Pearl if Lih Wen had a beneficial interest. There was also some risk to Mrs. Hsu because she believed that Mrs. Hsu wanted to stay in the property.
- [231] While she agreed that any risk to Mrs. Hsu could be mitigated by a joint title or life interest, she felt that it was simpler to do a transfer to Henry and to trust in Henry to care for Mrs. Hsu. She felt that Henry was deferential to Mrs. Hsu. She stated that if the transaction had involved a care agreement, she would have declined the engagement given the language challenge.
- [232] In cross-examination, Ms. Adrian agreed that she understood that Mrs. Hsu wanted to convey the property to Henry. She had no further dealings with the file after the second meeting.
- [233] In 2014, a letter was sent from Mrs. Hsu's counsel making inquiries about the transaction. Ms. Adrian reviewed her file, which is very sparse, and briefed her son, who drafted a letter in response. Ms. Adrian reviewed the letter before it went out. The 2014 letter from Mrs. Hsu's lawyer was the first time she had considered the matter.
- [234] She agreed that at the time of her examination for discovery, she believed that Henry and Pearl were not present. Her recollection today is different. Her 2014 letter makes no mention of Henry and Pearl and has Ms. Tsang translating throughout.
- [235] She stated that she has an impression of Mrs. Hsu speaking to her directly in English, speaking well but with an accent. She did not agree initially that this could be a memory of Pearl speaking. She then agreed that she cannot say for certain that Mrs. Hsu spoke English with her.
- [236] Ms. Adrian stated that someone, likely Ms. Tsang, told her that Mrs. Hsu spoke and understood Mandarin.

Henry

- [237] Henry stated that he, Pearl, Mrs. Hsu, and Ms. Tsang attended at the lawyer's office. Pearl acted as the translator. He said that Ms. Tsang only translated when Pearl could not understand a certain word and Pearl would ask her to translate that word for Mrs. Hsu.
- [238] Henry stated that Mrs. Hsu told the lawyer that she wanted to transfer the property to Lih Wen. He said that the lawyer was told that he had paid for half of the purchase price so the lawyer recommended that Henry's name has to be put on title. He stated that Mrs. Hsu told the lawyer, that all the children know about this.
- [239] He stated that the lawyer asked Mrs. Hsu if all the children were in agreement and Mrs. Hsu confirmed that they all agreed. Henry stated that Mrs. Hsu told Ms. Adrian that she was not worried that there would be a dispute in her family about a transfer to Lih Wen. Ms. Adrian asked, "do you agree to transfer to Henry and Lih Wen?" and Mrs. Hsu was rather happy and thanked Ms. Adrian. In his examination for discovery, Henry denied that this was a matter discussed by either Mrs. Hsu or Ms. Adrian.
- [240] Henry stated that he recalled a joke about if transferred to Lih Wen and he got married, would his wife be willing to let Henry and Pearl live there? So, it would be best to have the property in the name of both Henry and Li Wen. In the future, it would be decided according to Henry's will.
- [241] He stated that this was Ms. Adrian's recommendation. Mrs. Hsu agreed and praised Ms. Adrian for a good discussion.
- [242] It was his evidence that no one left the room. He and Pearl were present for the entire time. Pearl was interpreting for Mrs. Hsu. Ms. Tsang helped Pearl with a few English words. He stated that Ms. Tsang could not interpret or converse with Mrs. Hsu because Ms. Tsang only spoke Mandarin, not Taiwanese.
- [243] It was his evidence that no one told Ms. Adrian that there was an agreement that he was obliged to care for Mrs. Hsu for the rest of her life. He answered that caring for Mrs. Hsu is an obligation of all of her children. In any event this was not a matter that was discussed at the meeting. The subject was not discussed or mentioned.
- [244] Henry stated that Mrs. Hsu did not tell Ms. Adrian that she had given each son a property. She said only that she had handled her matters.

Pearl

- [245] Pearl stated that at the meeting Mrs. Hsu said that she wanted to transfer the property to Lih Wen. Ms. Adrian said that it was a good property. Mrs. Hsu replied that she wanted to transfer it to Lih Wen. Ms. Adrian said "slow down, I want to ask some questions".

- [246] Pearl said that she could not recall if Ms. Adrian asked how many children Mrs. Hsu had. She did not ask about other grandchildren. Ms. Adrian asked about other assets and Mrs. Hsu replied "a little bit".
- [247] Pearl said that Ms. Adrian asked if Mrs. Hsu's children, including Henry, have an opinion. Ms. Adrian asked if other children would complain. Pearl said that Mrs. Hsu replied that was no problem, she had distributed assets when her husband died. Pearl claims that Mrs. Hsu said that the children are very filial so it will be fine.
- [248] Pearl said that Mrs. Hsu told Ms. Adrian that in the past Henry had paid for half of the purchase price. She said, "Now I want to transfer to Lih Wen. I don't want to wait until I die. The children will argue over it".
- [249] Pearl stated that Ms. Adrian said that Lih Wen is still young. If in the future he marries it would be another half, he could kick Henry and Pearl out - an undesirable risk. Pearl said that Mrs. Hsu agreed with these concerns. She said that the lawyer made an arrangement to gift back to Henry the interest of Lih Wen. Mrs. Hsu was happy with that arrangement.
- [250] Pearl stated that Ms. Adrian told Mrs. Hsu, "put the title one half to each of you and Henry and then you can gift your half to your grandson". Mrs. Hsu agreed.
- [251] Pearl said that she translated everything for Mrs. Hsu. Henry likely didn't speak. She said that if she didn't understand something she asked Ms. Tsang. Ms. Tsang didn't say much during the meeting.
- [252] She said that there was no discussion about an agreement to look after Mrs. Hsu for the rest of her life. No one mentioned this subject. Mrs. Hsu never said that she wasn't concerned because Henry had agreed to look after her for her whole life.
- [253] Her evidence was that Mrs. Hsu intended Lih Wen to be on title. Henry came to be on title because of Ms. Adrian's advice. Ms. Adrian made this recommendation after being told that Henry had paid half. Prior to that, Mrs. Hsu did not instruct Ms. Adrian to change the title to reflect Henry's half interest.
- [254] It was Pearl's evidence that Mrs. Hsu wanted to give her interest in McMaster to Lih Wen to preserve the house for the family. She did not intend to gift her interest to Henry; She stated that by the end of the meeting what Mrs. Hsu wanted was for Henry to own one half and Lih Wen to own one half. She wanted Lih Wen to have actual ownership of one half. She wanted Lih Wen to have the actual benefit of the house and to carry on as owner in the future. Pearl stated that she conveyed Mrs. Hsu's wishes to Ms. Adrian at the first meeting with the occasional assistance of Ms. Tsang who assisted her with the correct words in English.
- [255] Pearl stated that Ms. Tsang did not translate what Mrs. Hsu said. She would provide assistance to Pearl with the correct word in English. She said that some key words she asked for assistance from Ms. Tsang.

- [256] Pearl stated that Mrs. Hsu did not want or expect a line-by-line translation. She was focused on the result. She trusted the lawyer to prepare the documents that correctly reflected her goal.
- [257] Pearl stated that at the first meeting Ms. Adrian did not discuss the documents she would prepare to achieve this end.
- [258] She said that she spoke Mandarin to Mrs. Hsu and Ms. Tsang and English to Ms. Adrian.

Mo Wei Tsang

- [259] Ms. Tsang stated that she attended at Ms. Adrian's office on May 19, 2009. She stated that Mrs. Hsu did not ask her to attend. Neither Mrs. Hsu nor Ms. Adrian asked her to translate at the meeting and she did not do so. Her purpose at the meeting was to make introductions, which she did.
- [260] She stated that Henry has limited abilities in English while Pearl could communicate quite well in English. Ms. Tsang stated that she has never heard Mrs. Hsu speak any English, and specifically, did not speak English with Ms. Adrian
- [261] Ms. Tsang stated that after she made introductions, she left the meeting room and waited in the lobby. At the end of the meeting she was called back in.
- [262] She said that at that time Ms. Adrian told her that there was a risk to Henry if there was a transfer to Lih Wen. Ms. Adrian said that Henry had contributed to the purchase and the mortgage but if only Lih Wen was on title, there could be problems if he ever married and asked them to leave. The risk would be there because Henry was not on title.
- [263] Ms. Tsang said that Ms. Adrian did not explain how she knew this. She did not ask Ms. Tsang to confirm. She said that Ms. Adrian wanted to make sure that Henry and Pearl to understand the risk to them if Lih Wen went on title. She asked Ms. Tsang to make sure that Henry and Pearl understood this risk. She said that she did not repeat. She asked Henry and Pearl if they understood and they said "yes".
- [264] Ms. Tsang stated that there was no instance at the first meeting when Ms. Adrian said something in English and she repeated it in Mandarin. She said there was no need because Pearl's English was as good as hers. She said that Pearl never asked her to explain what Ms. Adrian said, nor did Ms. Tsang have to explain in Mandarin.
- [265] Ms. Tsang stated that Ms. Adrian informed Mrs. Hsu of the risks of not being on title that she might not be able to stay in the property in the future.
- [266] Ms. Tsang said that this was the first time she had ever heard about Henry contributing to the purchase. Pearl and Henry had never mentioned this to her and neither did Mrs. Hsu.
- [267] Ms. Tsang said that no one asked her to explain to Mrs. Hsu about the risk to Henry and Pearl that Ms. Adrian had identified.

[268] Ms. Tsang stated that at the end of the hour-long meeting she did not know what would happen to the title of the McMaster Property. Ms. Tsang said that throughout the meeting, Mrs. Hsu was just sitting there. She did not speak to Ms. Tsang nor did she say any words in English. Ms. Tsang never interpreted anything for her.

Interval

- [269] Angela testified that in 2009 she was married and living in Boston. Her mother had died in January of that year and it was a very sad time in her life. Her husband, David, had scheduled a conference in Vancouver in May and Angela decided to accompany him. They had just learned that Angela was pregnant and hoped that this news would lift family members' spirits.
- [270] They arrived on May 16, 2009 and left on May 24, 2009. They stayed in a hotel and the tickets and documents outlining the schedule are in evidence. Angela was in Vancouver at the time of the first meeting; however, no one asked her to attend.
- [271] Henry testified at his examination for discovery that Angela was not in Vancouver at the time of the first meeting. Later in cross-examination he agreed that she did not attend because she was not asked to come.
- [272] Angela stated that prior to the second meeting, she visited the family at the McMaster Property. Mrs. Hsu seemed tired and subdued. The death of her daughter had hit her very hard and she was quieter than usual.
- [273] Lih Wen testified that either the day of or the day before the second meeting, Mrs. Hsu asked him to go with them to the lawyers. His understanding was that this was part of Mrs. Hsu's estate planning. The purpose of the meeting was to sign documents. He thought his name was going to go on title. He understood that the estate plan was that when Mrs. Hsu passes, the property would come to him.
- [274] On his examination for discovery, he stated that his understanding was that he was to go on title in the event of Mrs. Hsu's death, that the transaction was for Mrs. Hsu's future estate planning, in the event of her death.
- [275] Later in his testimony at trial, Lih Wen denied that his understanding was that the transaction was for the purpose of estate planning and that it was not his understanding that it would result in something that he would receive after Mrs. Hsu's death. He then stated that in his understanding, Mrs. Hsu did not want to give him something that was a gift to take place immediately. He said he thought the purpose of the transaction was to safeguard what would happen later and ensure there was a plan in place for after Mrs. Hsu's death.

Second Meeting

[276] There was a second meeting held on May 21, 2009 (the "Second Meeting"). At the meeting the following documents were executed by Mrs. Hsu, Henry and Li Wen:

- a) Mrs. Hsu executed a bare trust agreement dated as of May 17, 1997 (the "Bare Trust Agreement") which stated that she and Henry had each been the beneficial owner of an undivided one-half interest in the McMaster Property since its purchase in 1997;
- b) Mrs. Hsu and Henry executed a deed of gift (the "Deed of Gift") in which Mrs. Hsu gifted her one-half beneficial interest in the McMaster Property to Henry, and Henry accepted such gift;
- c) Henry executed a direction (the "Direction") under which he, as sole beneficial owner of the property, directed Mrs. Hsu to transfer title to the McMaster Property into the names of Henry and Lih Wen as joint tenants;
- d) Mrs. Hsu, in accordance with such Direction, executed a Form A transfer (the "2009 Form A Transfer") pursuant to which she transferred legal title to the McMaster Property to Henry and Lih Wen as joint tenants; and
- e) Lih Wen and Henry executed a bare trust agreement in which Lih Wen acknowledged that Henry was the sole beneficial owner of the McMaster Property and agreed that, upon Henry's death, he would deal with the property in accordance with the provisions for the distribution of the residue of Henry's estate as set out in his last will.

[277] There is conflicting evidence about who was in attendance and what occurred. It is common ground that Ms. Tsang was present at the lawyer's office, Angela and Mrs. Hsu were present, and that Henry and Lih Wen were present for at least part of the meeting. There is a conflict in the evidence with respect to the attendance of Pearl and the presence at the lawyer's office but not in the meeting of David and Eric.

[278] There is no issue that the documents were signed by Mrs. Hsu, Henry and Lih Wen at this meeting. There is conflict in the evidence about what was said, the extent, if any, of review of the documents and translation for the benefit of Mrs. Hsu.

Ms. Adrian

[279] In her evidence in chief, Ms. Adrian stated that at the start of the second meeting she was introduced to Angela. She said that present at the meeting were Angela, Mrs. Hsu, Ms. Tsang, Henry and Lih Wen. She said that she was sure that Pearl was not present.

- [280] In cross-examination, Ms. Adrian stated that she believes that Mrs. Hsu told her in English who Angela was and that she was going to help with the language. She then agreed that it was possible that it was Pearl who told her this. She stated that she was told that Angela was fluent in both Taiwanese and English. She believed that Angela would have spoken up if that was not the case.
- [281] Ms. Adrian did not mention Angela being present at the meeting in the 2014 response to the lawyer's letter. She stated that at the time of the letter, she did not appreciate the difference between Mandarin and Taiwanese. It was her evidence that it probably did not occur to her at the time to mention that Angela was present.
- [282] She stated that the participants were not given drafts of the documents in advance. She did not present the option to take away the drafts for review. She said she assumed that if they wanted more time, they would ask. She said that Lih Wen discussed things with and translated for Henry.
- [283] Ms. Adrian repeated that she was satisfied that Mrs. Hsu's interest was secure because Henry promised to care for her.
- [284] Ms. Adrian stated that at this meeting she suggested to Henry that he take the documents to another lawyer for review but he refused. She said that she told him that she would take his signature but would give him no legal advice.
- [285] Ms. Adrian said that having Lih Wen hold his interest in trust for Henry was a risk mitigation factor. Mrs. Hsu agreed with this because of the risk mitigation factor. She said that she was well aware that this was not the transaction that Mrs. Hsu had in her mind when she came so she wanted to make sure Mrs. Hsu agreed. She said that it was Henry who questioned the need for the document but when she explained the example of Lih Wen marrying, he agreed.
- [286] She stated that she produced the documents one at a time. She did not go through them line by line and did not ask for a translation line by line. She described what they accomplished, what was the effect and where Mrs. Hsu should sign. Then Angela spoke with Mrs. Hsu and said that Mrs. Hsu understood.
- [287] Ms. Adrian stated that there was no suggestion at the second meeting of a care agreement. However, she recalls asking Henry at that meeting whether he would be involved in Mrs. Hsu's care and he confirmed that he was committed to looking after her as he was signing the documents. Ms. Adrian had no concern based upon demeanour of the participants.

Henry

- [288] Henry stated that he, Mrs. Hsu, Angela, Lih Wen and Ms. Tsang attended the Second Meeting. Pearl was not present. He stated that she was home cooking at the time of the meeting and later said maybe she was cleaning the house. He said that he drove in one car and Eric drove to the meeting in another car. Eric did not go into the meeting.
- [289] On his examination for discovery, he testified that Pearl drove with him to the meeting but stayed in the car. She did not go into the meeting room.
- [290] He stated that Angela was introduced to Ms. Tsang and to the lawyer.
- [291] Henry stated that Ms. Adrian asked him and Lih Wen to leave the meeting. After a while they returned and signed the documents where it was specified for them. He said that Ms. Tsang was in and out of the meeting. He stated that he did not see Mrs. Hsu sign the documents because she had already done so when he re-entered the room.
- [292] Henry stated that after the meeting they all went next door to share a meal. They were joined by Angela, David, Eric, Flora and Pearl.

Pearl

- [293] Pearl stated that she did not attend the second meeting. Angela had arrived in Vancouver the day before and she could translate for Mrs. Hsu. She recalled that Angela came to the house before the meeting and that they all went out to eat after the meeting.
- [294] Pearl agreed that she called Angela and asked her to attend and that she did not tell her what the purpose was. She believed that Mrs. Hsu explained everything to Angela.
- [295] Pearl testified that prior to the meeting, Angela came to the McMaster Property and then Eric drove them to the lawyers.
- [296] She said that at the meal after the meeting, Mrs. Hsu said that she had a load removed from her heart because the matter had been dealt with.

Ms. Tsang

- [297] Ms. Tsang stated that she went to Ms. Adrian's office on May 21, 2009 for the Second Meeting but she did not attend the actual meeting, and instead, waited in reception. She did not confer with Mrs. Hsu or Henry or Pearl.
- [298] She recalled Henry, Angela and Mrs. Hsu were in attendance. She could not recall if Lih Wen or Pearl were there. She said she stayed in the lobby and didn't see anyone signing documents.

- [299] She said no documents were ever shown to her. She was never asked to translate for Mrs. Hsu or explain anything to her. She never said anything to Mrs. Hsu in Mandarin. They were not able to communicate owing to the fact that they spoke different dialects. She did not know exactly what was going to take place and she was unaware if documents were to be signed.
- [300] She said that Mrs. Hsu never said she had transferred her title or that she had given the house to Lih Wen or that Henry had paid part of the purchase price for the house. Henry never told her at this time that he had paid part of the price for the McMaster Property.

Angela

- [301] Angela stated that Pearl called her and asked her to accompany Mrs. Hsu at a particular place and time. She said that Pearl did not say what it was for. Angela assumed she was to be a caregiver for her grandmother. She was not told anything about what was to occur and not given any documents in advance.
- [302] Angela denied that she went to McMaster and was driven to the meeting from there. She said she had a distinct recollection of Pearl giving her the address and using the GPS on her car to locate it. She drove to the lawyer's office in her rental car.
- [303] When she got to the address she saw that it was a lawyer's office in Kerrisdale. There were two more cars in the parking. There was a woman there who she was told was a real estate agent by Henry, Pearl and Mrs. Hsu.
- [304] When they went in, Angela said that she was not introduced to anyone. She did not know the name of the person they were meeting or if she was the lawyer. She said that the lawyer, or assistant did not speak to her and Angela did not say anything to her.
- [305] They were taken to a meeting room. The person who was the lawyer or the assistant sat at 12 o'clock and Mrs. Hsu at 6 o'clock. Angela sat beside her grandmother at 7 o'clock. Pearl was at 2 o'clock. The real estate agent at 3 o'clock and Henry at 9 o'clock.
- [306] Angela stated that she was not asked to translate for or explain the documents to her grandmother and she did not do so. She saw documents given to her grandmother who was told to sign. Angela said that she showed her grandmother where she was to sign on the documents.
- [307] Angela stated that she could not have translated the documents for her grandmother. She only speaks Mandarin at the grade 6 level and her Taiwanese is rudimentary, limited to simple phrases. She stated that if she had known or if she had been asked to translate legal documents she would have hired a professional translator.
- [308] Angela stated that she did not recall anyone else explain the documents to her grandmother. She stated that there was no one else who was asking her grandmother if she understood what the lawyer was saying or explain to her.

- [309] She did not speak with her grandmother during the meeting, which was quite short. She said that it was her impression that everything had been explained and discussed on an earlier occasion and that this meeting was just to sign. She said that no one went through the documents one by one and no one read the documents to her grandmother.
- [310] Angela did not recall her grandmother speaking to Henry or Pearl. She recalled seeing Pearl nodding and the real estate agent saying something in Mandarin. She stated that her grandmother did not respond in English during the meeting. It was her evidence that her grandmother could not speak English. She said that the lawyer spoke in English during the meeting and Henry, Pearl and the real estate agent spoke in Mandarin. Throughout the meeting, no one spoke in Taiwanese.
- [311] Angela stated that she was unaware why the real estate agent was there because she did not speak Taiwanese. She does not recall the real estate agent speaking with her grandmother in Mandarin at the meeting and in any event her grandmother would not have understood.
- [312] Angela stated that she did not recall seeing Henry signing any documents. She stated that the Caucasian woman did not ask Henry and Pearl to leave. She believed that she would have remembered if that occurred.
- [313] Angela stated that after the documents were signed they left and she, Pearl and her grandmother went to a coffee shop. Henry left. Pearl was with her and her grandmother. Henry returned somewhat later and they left. Angela was surprised because she thought that there was going to be a longer visit.
- [314] Angela denied that the family shared a meal at a restaurant after the meeting. She said that she recalled it just being a short stop for coffee. It was very strange to her. She recalls having a decaf and cake and being very disappointed. She said that Lih Wen was definitely not there at the coffee shop.
- [315] Angela stated that Mrs. Hsu had never discussed with her what happened at the meeting. She would not do so with a grandchild. Angela never asked Henry or Pearl about it because she felt that it was not her business.
- [316] Angela said that Mrs. Hsu never said she was going to gift her house to Henry or his son. She said that if she had heard such a thing she would have remembered and would have discussed it with her husband. It would have been a big deal for such sizable gift.
- [317] Angela denied driving to the appointment in a car driven by her cousin Eric and stated that Eric was not there, nor did she see Lih Wen. She said that she drove herself in her rental car. She denied that her grandmother said that she was going to the lawyer's office to give her house away. She said she would have remembered such a conversation.

Eric

- [318] Eric testified that prior to the meeting, someone from Henry's called him and said there was going to be a family lunch or dinner after a meeting with the lawyer. Whoever called said that he might as well take Mrs. Hsu and Angela to the lawyer and then go to the lunch. When asked who called, he said Henry or Pearl.
- [319] He said this call occurred a couple of days before the meeting. He asked why they were going to the lawyer and he was told Mrs. Hsu is going to transfer the McMaster Property to Henry and Lih Wen. He agreed that the meeting occurred during a work day for him. Henry, Pearl, Angela and Lih Wen all could drive. No one explained to him why they needed him to drive in the middle of his work day.
- [320] He said he drove Angela and Mrs. Hsu to the lawyer's office and sat outside while they were meeting.
- [321] He stated that during the drive over, Mrs. Hsu said that that because she was getting older she wanted to transfer the ownership to Henry and Lih Wen because she might want to go back to Taiwan for the rest of her life. She wants to make sure the ownership is clear, that there is no property in her name while she is in Taiwan. He said that Mrs. Hsu explained that she wanted Angela to come to translate for her. However, during cross-examination, he stated that he did not hear Mrs. Hsu specifically ask Angela to translate but rather, it was his understanding that this was the purpose of Angela's attendance. He said that both he and Mrs. Hsu knew that Angela would be there to translate
- [322] Eric stated that "we always knew the property will end up transferred to Henry and Lih Wen".
- [323] He said that he sat outside in reception during the meeting. Henry and Li Wen arrived later. After they went to lunch somewhere in Kerrisdale, Mrs. Hsu, Henry, Pearl, Li Wen, Angela and her husband David were there.
- [324] He saw Angela several times during her visit to Vancouver.

Lih Wen

- [325] Lih Wen stated that on the day of the meeting, Angela and David came over to the McMaster Property. He thought that Eric had also come over. They all went to the lawyers in a sort of a caravan. It was his recollection that he was in a car with his father and possibly David. However, at his examination for discovery, he stated that Angela drove to the lawyer's office in a rental vehicle.
- [326] He stated that now he has a clear recollection that Eric was present. On examination for discovery, he never said that Eric was involved in any way at the meeting.

- [327] In his testimony at trial, he never mentioned Pearl being present at the meeting. In his examination for discovery, he said that Pearl was at the second meeting.
- [328] He stated that when they arrived at the lawyer's office, they all went in to the reception and met Ms. Adrian. He thought David sat in the car, however he later agreed that it was possible that David was not there. He recalled that Ms. Tsang was there making introductions. Some remained in the office and some went into the meeting. Ms. Tsang was in and out of the meeting.
- [329] He recalled that at one point he and Henry were asked to leave and then after a few minutes they went back into the meeting. At that point, Ms. Adrian explained the documents to Henry and Lih Wen in English.
- [330] At this time, Angela was speaking to Mrs. Hsu. He later stated that at this point Angela was translating for Mrs. Hsu but that he has no recollection of what Angela was saying. Lih Wen said that he understood that the documents he signed meant that eventually he would have the property after his father.
- [331] He said he was a dutiful son and he went along with whatever his elders requested of him. His understanding was that the documents he signed gave his father the power to manage and take care of the property for him. He understood that Henry was to manage the property for him. He had no financial peril and he was on title because Mrs. Hsu wanted the property eventually to go to him. He does not recall if anyone explained to him that the documents gave him no rights and interest in the property.
- [332] He said he recalled Angela asking something and that Mrs. Hsu nodded in response.
- [333] At the end of the meeting there were expressions of gratitude. He stated that his grandmother revered professionals for their work.
- [334] They then all went to lunch or dinner at the sushi restaurant next door. He could not recall if it was lunch or dinner. He did not recall any discussion about what had just happened.

Following the Second Meeting

- [335] After the meeting, the documents and the statement of account were sent to Henry and Lih Wen, not to Mrs. Hsu. Ms. Adrian stated that this was a mistake by her staff. The documents were in English and Henry paid the account. Ms. Adrian stated that she took this as a sign that Mrs. Hsu was easing out of the management of her affairs. Henry was the trusted person who looked after her affairs. Ms. Adrian had no further dealings with this matter until the 2014 letter from the lawyer.
- [336] The reporting letter stated that Mrs. Hsu and Henry should review their wills. Henry did not ask Mrs. Hsu to review her will. He gave repeated non-responsive answers when asked if he conveyed this information to Mrs. Hsu.

- [337] Mrs. Hsu was never given a copy of the documents. At first Henry contended that only one copy was sent, but this was not consistent with the reporting letter. He then changed his evidence to state that any document that came for Mrs. Hsu in English would not be provided to her.
- [338] Dr. Lin stated that Angela spoke to him about a visit to Vancouver in 2009. She said nothing at all about the McMaster Property.
- [339] Chun-Yen stated that after her elder sister died in 2009, Henry never referred to the McMaster Property as his property. He always referred to it as Mrs. Hsu's house.
- [340] Henry agreed that after 2009, he never told anyone in the family about the transfer prior to the litigation. He never told any of Mrs. Hsu's friends or other legal advisors. He never heard Mrs. Hsu tell anyone about the transfer and no one told him that Mrs. Hsu had told them about the transfer.

2011-2012

- [341] Pearl stated that starting in 2011, Mrs. Hsu began to experience cognitive decline; for example, she mistook the remote control for their telephone. She could not recall if she had taken her medication. However, during cross examination, she agreed that in 2012, Mrs. Hsu had good mental capacity. She had no concern that Mrs. Hsu could not remember what her assets were and no concern about her ability to sign legal documents. She agreed that she never reported any concerns about Mrs. Hsu's mental functions to the family doctor.
- [342] Frank testified that in 2011, Mrs. Hsu returned to Taiwan for a lengthy stay. He stated that during this period he and his wife saw her nearly every day. He said that she told him that the eldest grandchild had told her that if she did not return to Taiwan her funds in her post office account would be frozen. She had to return and re-activate the account.
- [343] Frank stated that during this visit Mrs. Hsu told him that Pearl did not treat her well. Mrs. Hsu said that she was afraid to talk about it to Henry. Once Mrs. Hsu had told Henry that his wife did not treat her well and he became very cold in response to her. He said that she told the youngest son and his wife this as well. He did not know if Mrs. Hsu told the eldest son.
- [344] Frank said that in his experience, conflict between mothers and their daughters-in-law was inevitable. He consoled Mrs. Hsu and advised her to pretend that she cannot hear the discussions. Frank said that Henry had virtually no contact with his mother during this visit.
- [345] Frank stated that in 2012, Mrs. Hsu returned to Vancouver. He said that she told him that she was not welcome at Chien-Ming's home. They said that because Henry would get the McMaster Property, he should be the one to care for her in the future. He said that she told him that Chien-Ming and her eldest grandson told her this. They felt that she had overstayed her welcome in Taiwan. Chun-Yen's evidence was to the same effect.

- [346] Henry testified that when Mrs. Hsu returned from the 2012 trip, she was in a wheelchair. He said that she told him that her "brain felt hollow". From this point Mrs. Hsu started to forget things.
- [347] Pearl denied that she had ever told Mrs. Hsu that she should go to a care home. She said that Mrs. Hsu requested the power of attorney and representation agreement be created because her head felt increasingly hollow.
- [348] In April 2012, Henry and Pearl arranged for Mrs. Hsu to meet with Chun Yen (Cory) Liu, who is a Taiwanese-speaking notary public. Mr. Liu prepared, and Mrs. Hsu signed, an enduring power of attorney and a representation agreement.
- [349] Starting in 2012, a care nurse came to the home twice a week to assist with Mrs. Hsu's care. By this time, Mrs. Hsu required considerable personal care. She needed a wheelchair and assistance getting to the toilet. She was incontinent and wore diapers.

2013

- [350] Dr. Lin stated that he had a conversation with Pearl in early 2013 concerning Mrs. Hsu's condition. He said that Pearl said that Mrs. Hsu's sleep was poor and her mood was unstable. She was no longer active and her legs were weak. Dr. Lin suggested Pearl take Mrs. Hsu to her Vancouver doctor.
- [351] Frank stated that he kept in touch with Mrs. Hsu following her return to Vancouver in 2013. By this stage, her mobility had become more limited but he felt that her health otherwise was pretty good. They conversed over Skype nearly every day and her diabetes was well-managed.
- [352] Chun-Yen stated that when her mother returned to Vancouver, they kept in contact with Skype. Chun-Yen said that she could see that Mrs. Hsu was increasingly unhappy and that she spoke less and less. Chun-Yen asked her what was wrong but Mrs. Hsu would not say.
- [353] Chun-Yen said she spoke to Henry about this. She said that she told him that their mother was elderly and has mobility problems. Henry is the only person in Vancouver to care for her. She said that she asked him to please take good care of their mother and reminded him that she would leave the McMaster Property to him in the future. Chun-Yen stated that Henry replied that he would rather give up the McMaster Property. She stated that shortly after this conversation Henry called and told her to tell Te-Yung to pick Mrs. Hsu up at the airport. She was coming to live in Taiwan.
- [354] Henry denied this conversation. It was his evidence that he had never spoken with her about these matters. It was his evidence that prior to Mrs. Hsu returning to Taiwan in 2013, no one raised any concerns or complaints about the care given to Mrs. Hsu by any members of his family.

- [355] In 2013, Mrs. Hsu was hospitalized for pneumonia. Shortly after she was released from the hospital, Henry and the youngest son flew with her to Taiwan in March 2013. Frank said that he was not involved in the discussions about her return to Taiwan.
- [356] Mrs. Hsu returned to Taiwan to live in March 2013. Te-Yung and Henry accompanied her on the trip. Following her return to Taiwan she lived in Kaohsiung, where she was cared for by either Te-Yung or Chun-Yen. Dr. Lin monitored her health on a regular basis until her death in September 2016.
- [357] Frank stated that after Mrs. Hsu arrived, she told him that in the past year she was treated poorly in Vancouver by Pearl. She told him that Henry sometimes treated her well but when she told him about Pearl then he would not treat her well.
- [358] Frank stated that when Mrs. Hsu returned to Taiwan in 2013, her mobility was very limited. She had little energy and was very sad but her mental state was otherwise unimpaired. She told him that she still regarded Vancouver as the best place for her to live and she had not wanted to return to Taiwan. He stated that in the following months, Mrs. Hsu's mobility remained limited but her mood improved, she seemed happier, and her overall health improved.
- [359] Henry stated that it was Mrs. Hsu's wish to return to Taiwan. She said that she would choose which brother to live with. The plan was for Chien-Ming to renovate his house to install an elevator. She would live with Te-Yung until that was completed and then live with Chien-Ming.
- [360] Chun-Yen stated that when she arrived in 2013, Mrs. Hsu looked like a dying person. She looked helpless when she got off the plane, however, she was gradually restored to a happy strong person.
- [361] Chun-Yen stated that after she returned to Taiwan, Mrs. Hsu told her that she was being mentally tortured by Henry and Pearl in Vancouver. When people were around, Pearl would treat her well. When no one was around, she would be cold, and ignore her. Mrs. Hsu told her that she would be reprimanded like a child. Mrs. Hsu also said that she would be left so long that urine would spill over because of her incontinence.
- [362] Chun-Yen said that she asked Mrs. Hsu why she did not tell others and get help. She said that Pearl would tell others that she is demented. Mrs. Hsu was afraid to talk about it. She was afraid she would be sent to a care home. She said that if she said anything to Henry he would be cold to her for a week.
- [363] Henry stated that neither he nor Pearl ever told Mrs. Hsu that they would put her in a care home. This was not something they would do. He said that there was never any discussion with his siblings about this subject.

- [364] Pearl stated that during this time Mrs. Hsu's health was deteriorating. Mrs. Hsu told her that her head felt hollow. She stated that the family doctor recommended that she should return to live in Taiwan. This was not put to the family doctor, who testified that he had no concerns about Mrs. Hsu's mental competence.
- [365] Initially, Mrs. Hsu stayed with her youngest son. Frank denied that the initial plan was for this to be a temporary measure while Chien-Ming was renovating his house. She had left Taiwan the last time with a saddened heart and was disappointed in Chien-Ming and her eldest grandchild. Frank said that Chien-Ming phoned and asked if she was going to move to her hometown. She said that she did not want to go back to her hometown.
- [366] When she arrived in March 2013, Frank stated that Mrs. Hsu instructed him to withdraw approximately \$420,000 CDN from the RBC Dominion Securities account in his name. This was the first and only withdrawal that he made from that account. Frank stated that he gave the funds to Mrs. Hsu and subsequently changed the address for the statement so that he would receive them in Taiwan.
- [367] The funds were transferred by two wire transfers, one on April 30, 2013 for \$186,000 and on June 28, 2013 for \$280,000. Frank identified these as the transfers made at Mrs. Hsu's instruction, the funds to be used for her living expenses.
- [368] Frank stated that he had initially asked Henry to attend to the transfers but Henry went to Haiti without having made the transfers so Frank was forced to make them.
- [369] Frank stated that Mrs. Hsu never contacted him between 1997 and 2013 with respect to the contents of this account.
- [370] Chun-Yen stated that Te-Yung provided excellent care for Mrs. Hsu. He bathed her, carried her to her wheelchair and to the toilet. He got up in the night to check on her. He recorded Japanese songs from her childhood to play for her and he took her out on excursions.
- [371] It was difficult for him to manage as he had a six-year-old daughter at home. After about six months, he became ill and Mrs. Hsu requested Frank and her daughter to help with her care and they did so. Eventually, Te-Yung recovered and shared in caring for Mrs. Hsu. Chun-Yen stated that Hsueh-Mei came to help from time to time and Cher's husband provided medical care for Mrs. Hsu. She stated that Chien-Ming did not provide care or assistance.
- [372] Dr. Lin stated that when Mrs. Hsu first arrived she was very weak, quiet and sleepy. After a month, her energy and general health were restored and her mind was clear. She was able to talk freely and express herself.

- [373] In June 2013, Mrs. Hsu had a surgical procedure to help with her mobility. Dr. Lin stated that he was involved in the decision. He was satisfied that by this point she had recovered sufficiently to undergo surgery. Dr. Lin was satisfied that Mrs. Hsu had a clear mind and was capable of giving informed consent for the surgery. In the result, the surgery improved the weakness in her legs and she recovered well.
- [374] Frank's evidence was that Henry and Pearl did not assist with Mrs. Hsu's care during the recovery. They visited briefly for less than a day.
- [375] Dr. Lin did not consider testing her for dementia or mental competence. He did not consider that she needed such a test. He felt that he had no obstacle in communicating with her and that he was lucid and able to communicate. Dr. Lin continued to monitor her condition until her death.
- [376] Frank denied that he prevented Mrs. Hsu from moving to live with the eldest brother. Henry and Chien-Ming's evidence was that their contact with their mother was impeded by the other children.
- [377] Frank's evidence was that Mrs. Hsu's mental acuity in 2013 was excellent. She had no issues with her memory and recall and she was not confused. She did not have issues with her short-term memory, in fact, Frank alleges that she had no issues with her memory at all. His evidence was that her mental faculties remained unimpaired until her death.
- [378] Chun-Yen stated that Mrs. Hsu wanted her own place. She purchased a property with her own funds and registered it in Chun-Yen's name. She and Frank lived there with Mrs. Hsu when her mother was not with Te-Yung

Sale of Hangzhou

- [379] Hangzhou was sold on August 9, 2019 for the gross sales price of NT \$50,700,000.
- [380] There is conflicting evidence with respect to the genesis of this sale. Frank testified that the sale was directed by Mrs. Hsu who wanted the funds to provide for her living expenses. Chun-Yen and Frank testified that Hangzhou belonged to Mrs. Hsu and therefore she demanded all of the sale proceeds.
- [381] Frank testified that Mrs. Hsu told him that she needed funds for living expenses and to acquire a property for herself so that grandchildren could have a place to stay when they visited her. She wanted Henry to sell Hangzhou so that she could use the proceeds for those purposes. Chun-Yen's evidence was to the same effect.
- [382] Frank stated that he was still managing the rental of this unit. He spoke with Henry about Mrs. Hsu's wishes and suggested that the property could be sold to the existing tenants. Frank stated that Mrs. Hsu told Henry her intentions and he agreed to the sale of the property.

- [383] The property was sold in the summer of 2013 for NT \$50,700,000, approximately \$2 million CDN. Henry deposited \$20,000,000 into Mrs. Hsu's bank account. Pearl deposited \$2,000,000 into Mrs. Hsu's account.
- [384] Frank stated that Mrs. Hsu was heartbroken and disappointed when she learned that Henry did not deposit the entire process of sale. Chun-Yen's evidence was to the same effect. She stated that her mother told her that she had thought she could trust Henry but now "her heart was stabbed".
- [385] Frank stated that Henry had previously agreed that the proceeds would go to Mrs. Hsu. Henry did not say anything to Frank after he failed to deposit the entire proceeds. He stated that Mrs. Hsu believed that the proceeds belonged to her. Henry never stated that he was making a gift of the proceeds, nor did he say that he was repaying a loan.
- [386] Frank stated that the explanation that was eventually provided was that the funds were for living expenses for Mrs. Hsu's final years. Chien-Ming told Henry that an elderly person does not require a lot of money so there was no need to give so much to Mrs. Hsu.
- [387] Henry's evidence was that the sale was at his initiative. His elder sister-in-law told him about land that was available for purchase to be used for a temple. He decided to sell Hangzhou and use part of the proceeds for that purpose. He testified that Frank and Te-Yung told him that Mrs. Hsu needed money for her care and he had the ability to provide some funds for that purpose.
- [388] He stated that he never discussed this sale or the distribution of proceeds with Mrs. Hsu. Further, Mrs. Hsu never mentioned these matters to him.
- [389] Henry stated that the property was his and the proceeds of sale his to do with as he chose. He used NT \$7 million to purchase land for the temple at the request of his eldest sister in law. He transferred NT \$6 million to his eldest sister in law's account, which he characterized as a loan to his eldest brother. He transferred NT \$20 million to his mother's account and retained the rest.
- [390] He testified that he owed NT \$8 million to Mrs. Hsu and with what he calculated as interest he thought NT \$13 million would be sufficient. But after discussion with Frank and Chien-Ming, he decided to pay NT \$20 million.
- [391] He stated that the NT \$8 million was related to the need to remove Chien-Ming's condition for immigration and the purchase of the store. Chien-Ming was supposed to provide the NT \$8 million. It represented an amount that Chien-Ming owed to Mrs. Hsu in relation to property transactions in Toucheng. However, later in his testimony he stated that the NT \$8 million was a gift to him from Mrs. Hsu on the condition that the Tolmie Property must be purchased.

- [392] As a result, Henry deposited NT \$20 million to Mrs. Hsu's account at the Zhanghau Bank. He gave his eldest sister-in-law's temple NT \$7 million and transferred NT \$6 million to her account, which Henry and Chien-Ming describe as a loan.
- [393] Chien-Ming testified that in 2013, he borrowed NT \$6 million from Henry. The funds were for Eric to purchase a bigger home in Vancouver. There are no documents evidencing the debt and no terms of repayment. He stated that maybe in the future it will be returned.
- [394] He stated that Henry told him that he owed money to Mrs. Hsu. Mrs. Hsu never said anything about such a loan.
- [395] No sales agreements or contracts for purchase were produced with respect to the transfer of Lot 9 to Eric. Chien-Ming stated that he paid NT \$8 million to Mrs. Hsu for the property. However, it was his evidence that as of 1995, the amount was paid in full and he was not indebted to Mrs. Hsu.

Aftermath

- [396] Henry stated that after he had paid the NT \$20 million to Mrs. Hsu, Te-Yung told him not to call. By this time, Mrs. Hsu could not initiate calls on her own.
- [397] Following the receipt of only a portion of the sales proceeds of the Hangzhou Property, Mrs. Hsu told Frank that she had told Henry that she wanted to sell the McMaster Property and asked him to move out. She said that Henry responded that the property had been transferred out of her name to Henry and Pearl.
- [398] Mrs. Hsu responded with:
- a) A Taiwan will made on August 14, 2013 made with a Taiwanese lawyer (the "Taiwan 2013 Will");
 - b) An attestation letter made on August 31, 2013 made with a Taiwanese lawyer;
 - c) A Declaration and power of attorney made on October 16, 2013 made with a Taiwanese notary public; and
 - d) A notice of civil claim filed on July 14, 2014 by a Taiwanese-speaking Canadian lawyer, Betty Lin, with whom Mrs. Hsu spoke in Taiwanese.
- [399] The Taiwan 2013 Will provides that, with respect to the McMaster Property:

VIII. My house at 5662 McMaster Road, Vancouver, BC Canada V6T 1J8 is purchased and owned by me alone. I hereby authorize TE-YUNG HSU and TEN-SENG JEN with full power and rights to decide on and deal with the recovery and distribution of the house.

- [400] According to Frank, Mrs. Hsu denied knowing that she had signed something that would have given away her home before her death and while she recalled seeing a female Caucasian lawyer, she did not intend to relinquish her interest to Lih Wen until after she died.
- [401] Dr. Lin stated that Mrs. Hsu told him that she had purchased the McMaster Property. The house was hers and she did not know what had happened. She said that she was going to resolve the matter through legal means. He said that he was not assisting in the litigation but nothing suggested to him that Mrs. Hsu was not aware of the steps that were being taken. She knew what was occurring and was very consistent in her desire for taking legal action.
- [402] Chun-Yen stated that Mrs. Hsu told her that since Henry was not willing to care for her, and sent her back to Taiwan, there was no need to leave the McMaster Property to him when she passes.
- [403] Frank testified that in the aftermath of Mrs. Hsu's disappointment, she told Henry to move out of the McMaster Property because she was going to sell it. She knew that she would not be returning to Vancouver and wanted the property sold so that she could be more secure in her final years. In addition, since Henry would no longer be looking after her for the rest of her life, he would no longer inherit the property.
- [404] He stated that Mrs. Hsu had told him that she had instructed Henry to move out of the McMaster Property. He stated that Mrs. Hsu told him that when she told Henry of her intentions, he laughed and said "you transferred a half share of the property to me in 2002 and in 2008 you transferred the other half to Pearl. You have forgotten".
- [405] Frank stated that Mrs. Hsu told him that she found this unbelievable. He asked her if this had happened and she said it was not possible because she would never distribute her assets while she was still living.
- [406] Chun-Yen stated that when Henry told Mrs. Hsu that she had transferred the property she was shocked. She said that was not possible. She said that Mrs. Hsu had told her that after elder sister died, Henry and Pearl has suggested that the McMaster Property could be reassigned to Henry. However, Mrs. Hsu was of the view that the property had to be hers for her old age and it could not be given away until she passed. She said that Mrs. Hsu told her that Henry has suggested passing it to Lih Wen. Mrs. Hsu thought that this was a good idea but only to be accomplished after her passing.
- [407] Henry denied that his mother told him that she wanted him to leave the McMaster Property and give it back to her. He said that she could not express such thoughts. He stated that he had no such conversation. He denied that he ever said to anyone that the house had been transferred in 2002 or 2008.

- [408] Mrs. Hsu hired a lawyer in Taiwan who prepared a demand letter to Henry. The demand letter is dated August 21, 2013. Frank stated that Mrs. Hsu met with the lawyer for an hour or two to give her instructions.
- [409] Frank testified that Mrs. Hsu told him her intentions. Since Henry was no longer caring for her, she would not leave the house to him. The children who cared for her should inherit her assets. In Taiwan, her three children would care for her, so she intended to re-distribute her assets in a fair manner.
- [410] Frank stated that Mrs. Hsu told him that she would like him to help her to recover the McMaster Property and distribute the proceeds to her family members. She said that she was prepared to commence proceedings. Her youngest son would be her representative and he had power of attorney.
- [411] A number of documents were obtained from Vancouver and Frank stated that he reviewed them with Mrs. Hsu. He showed her the unsigned transfer document making Henry a half-owner. He said that Mrs. Hsu told him that the lawyer had analyzed that document for her and asked what she wanted. She said she was not going to sign to make Henry a joint owner. Her idea was that he would take the property on her death on the condition that he care for her during her life and not send her to a care home.
- [412] Frank stated that he reviewed the documents from 2009 with Mrs. Hsu. She was shocked and angry and she told him that she had decided to hire a lawyer to recover the property. She would never have transferred the property during her lifetime.
- [413] Frank said that Mrs. Hsu told him that she had written her name on the document but that she did not know what the document said. When the document was explained to her, she said that she found it hard to believe that such a thing had happened. It was very different from what she thought she was going to sign when she went to the lawyer. She thought she was going to sign a document that stated the property would go to Henry upon her passing. She recalled going to see the lawyer in 2009, however, she could not recall the lawyer's name and she said that no one at the time told her the nature of the documents. Frank said Mrs. Hsu was shocked and heartbroken that her son would do such a thing.
- [414] She recalled Henry and Pearl taking her to a lawyer in 2009 because it was shortly after her oldest daughter, Cher, had passed away. She had spoken to Henry and Pearl. She believed that she was going to sign a document stating that the McMaster Property would go to their son, Lih Wen, after her death, not to Henry and Pearl. She recalled signing documents that had not been translated.
- [415] Frank stated that Mrs. Hsu told him there were two meetings. At the First Meeting, Henry and Pearl were there together with another Asian woman that she did not specifically recall. Mrs. Hsu was unaware why that woman was present. The woman spoke with the lawyer and Henry and Pearl but not with Mrs. Hsu because the woman did not speak Taiwanese and Mrs. Hsu could not understand her.

- [416] Frank stated that Mrs. Hsu told him about the Second Meeting. Henry drove her and her grandson there and Pearl may have also been present. Both the Asian woman from the First Meeting and Angela was present. Mrs. Hsu recalled signing documents at the second meeting. She said the documents were not translated and although Angela was present, she did not translate the documents for Mrs. Hsu.
- [417] She said that she signed the documents even though they had not been translated because she was under the assumption that the documents reflected her wish for the property to go to her grandson after her death. She trusted Henry and did not think he would lie to her so she signed the documents. She said that they had agreed it would be better for the property to go to her favorite grandson when she proposed it.
- [418] She told Frank that she also recalled going to a Taiwanese-speaking lawyer, prior to one of her trips home, at Henry and Pearl's insistence. She recalled this distinctly that they wanted to obtain a power of attorney. She told him that these documents, the power of attorney and representation agreement were not explained to her. She recalled signing the documents and said that Henry and Pearl had told her because she was elderly, she had to give authority them to care for her.
- [419] Chun-Yen stated that the family did not encourage Mrs. Hsu to commence the litigation. Mrs. Hsu was very determined and they only supported her. She stated that Chien-Ming lied to Mrs. Hsu about the balance when Henry sold the property. Chien-Ming objected to the lawsuit and "ganged up" on Mrs. Hsu with Henry.

2015-2016

- [420] The emergence of the dispute concerning the McMaster Property divided the family. Frank recalled that in 2015, Chien-Ming commenced a capacity lawsuit. Frank attended court on behalf of Mrs. Hsu. In February 2016, there was a notice of the court issued for an evaluation and it was to be done at a hospital. Frank explained to the court that Mrs. Hsu had very limited mobility and requested the evaluation be done at her home. In the result, no assessment was done because they could not find a doctor who was willing to attend the home.
- [421] Chien-Ming testified that he had difficulty seeing his mother after the dispute arose. He recalled an occasion in 2015 when he did see Mrs. Hsu. She was in bed, ill, incontinent and requiring care. He stated that her mental state was good at the outset but then diminished. She thought that he was one of her grandsons.
- [422] Chun-Yen stated that Chien-Ming only asked to be involved in Mrs. Hsu's care after the lawsuit was commenced. At this point, he asked Mrs. Hsu to live with him but before that, Chun-Yen alleges that Chien-Ming had treated her in a cold way.

- [423] She said that Chien-Ming only came to visit Mrs. Hsu once following her spinal surgery. They never prevented him from visiting and she said that Mrs. Hsu was saddened by his behaviour.
- [424] She said that Henry never contacted her about Mrs. Hsu's care once she was living in Taiwan. He never contacted her to arrange a visit nor did he ask for reports on her health and living circumstances.
- [425] Chun-Yun stated that on one occasion Henry arrived unannounced at her home with five or six others whom let them in. On that occasion Mrs. Hsu was at Te-Yung's house. She testified that she never prevented Henry from seeing his mother.
- [426] Chun-Yen stated that Mrs. Hsu never asked her to help contacting Henry. She said she never expressed a desire to stop the litigation and said that Mrs. Hsu told her that the litigation must be carried on for her after she passed. Mrs. Hsu said that she would not rest in peace if it was not resolved.
- [427] Frank agreed that the eldest brother came to visit Mrs. Hsu while she lived with him and his wife. He denied that she had any memory or cognitive impairment and also denied that she could not recognize him or that she confused him with another family member.
- [428] Frank stated that Henry showed up unexpectedly at his house in 2015 and he had not given any advance notice. Frank agreed that he told Henry that Mrs. Hsu was at the youngest brother's house. He denied that he told Henry that Mrs. Hsu's cognitive ability was like a young child.
- [429] Dr. Lin stated that Mrs. Hsu's cognitive ability remained well. She could recognise everyone and express herself freely. She had no difficulty recalling things from the past, did not say things incorrectly, and she was not mentally ill. She had not deteriorated compared to the average person. There was nothing unusual with her memory and did not cause him concern.

Credibility and Reliability

- [430] Credibility and reliability are distinct concepts relevant to the assessment of testimony. Reliability concerns the accuracy of the witness's testimony and involves concepts such as the ability to accurately observe, recall and recount the events at issue. Credibility concerns the honesty and sincerity of the witness. A witness who is credible may be unreliable: see *R. v. Morrissey*, [1995] O.J. No. 639 (C.A.) at para. 35.
- [431] Factors to be considered in assessing the credibility and reliability of a witness's testimony are set out in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186. These include:
- a) The ability and opportunity of the witness to observe events;
 - b) The firmness of their memory;

- c) Their ability to resist the influence of interest to modify their recollection;
- d) Whether their evidence harmonizes with independent evidence that has been accepted;
- e) Whether the witness changes their evidence during cross-examination (or between examination for discovery and trial) or is otherwise inconsistent in their recollection;
- f) Whether their evidence seems generally unreasonable, impossible or unlikely;
- g) Whether the witness has a motive to lie; and
- h) The demeanour of the witness generally.

[432] The passage of time is an important factor that affects the reliability of a witness' testimony, see *R. v. G.L.*, 2013 ONSC 7876 at para. 74, cited in *Telford v. School District No. 42 (Maple Ridge & Pitt Meadows)*, 2018 BCSC 2165 at para. 20. In the present case, relevant testimony spans decades.

[433] A closely related but every important factor is the nature of memory itself. This was addressed by Justice Charon (as she then was) in *R. v. Miaponoose* (1996), 30 O.R. (3d) 419 (C.A.). Justice Charron addressed the issue in relation to the question of eyewitness identification as follows:

Eyewitness testimony is in effect opinion evidence, the basis of which is very difficult to assess. The witness's opinion when she says "that is the man" is partly based on a host of psychological and physiological factors, many of which are not well understood by jurists. One example is pointed out by the Commission (at p. 10):

Simply by way of illustration, psychologists have shown that much of what one thinks one saw is really perpetual filling-in. Contrary to the belief of most laymen, and indeed some judges, the signals received by the sense organs and transmitted to the brain do not constitute photographic representations of reality. The work of psychologists has shown that the process whereby sensory stimuli are converted into conscious experience is prone to error, because it is impossible for the brain to receive a total picture of any event. Since perception and memory are selective processes, viewers are inclined to fill in perceived events with other details, a process which enables them to create a logical sequence. The details people add to their actual perception of an event are largely governed by past experience and personal expectations. Thus the final recreation of the event in the observer's mind may be quite different from reality.

Witnesses are often completely unaware of the interpretive process whereby they fill in the necessary but missing data. They will relate their testimony in good faith, and as honestly as possible, without realizing the extent to which it has been distorted by their cognitive interpretive processes. Thus, although most eyewitnesses are not dishonest, they may nevertheless be grossly mistaken in their identification.

[434] A court can accept some, all or none of a witness's evidence. In general, a party who asserts a proposition carries the burden of proving it on the balance of probabilities.

- [435] There are other factors that complicate the assessment of the evidence in the present case. Mrs. Hsu has died and so her evidence must be assessed through hearsay. In addition, Henry and Pearl place reliance on aspects of what they assert were actions and conversations with Cher who has also died and whose evidence is therefore not available.
- [436] In many cases tracing transactions through the documents, in particular banking records, provides an independent and reliable source of evidence. In the present case, such tracing is hampered by the fact that family members mingled their funds in the same accounts.
- [437] Family members also transferred funds to other family members in a somewhat circuitous fashion. For example, Frank transferred funds intended for Mrs. Hsu to Cher's account to be forwarded on. The funds, although Mrs. Hsu's and intended for her use might then be deposited in Henry's account.
- [438] In addition, and more problematically, the documentary evidence is incomplete. Records for certain accounts, such as Henry's chequing account, have not been produced. Other records, such as the RBC Dominion Securities account, are not available for the entirety of the relevant period.
- [439] The documentary evidence is likewise incomplete with respect to disputes concerning ownership of and transactions relating to properties in Taiwan and Henry and Pearl's occupations and incomes in Taiwan.
- [440] Thus, many of the central issues in the present case cannot be resolved through reference to documentary evidence. This puts an even greater emphasis on the viva voce testimony of the witnesses. In particular, the testimony of Frank and Chun-Yen is highly relevant with respect to certain banking transactions and Mrs. Hsu's expressed wishes, intentions and reactions. The evidence of the participants in the First and Second Meetings is also of critical importance in the resolution of the matters at issue.

Frank and Chun-Yen

- [441] I have concluded that the evidence of both Chun-Yen and Frank is both credible and reliable. They were never challenged on their credibility or motivation for bringing this proceeding. They do not benefit directly from the recovery of the property. They acknowledged the limits of their recollection and knowledge in their testimony and gave responsive answers both in direct and cross-examination. Their evidence was consistent, both with documentary evidence and between chief and cross.

Henry and Pearl

- [442] I have reached the opposite conclusion with respect to the testimony of Henry and Pearl. I have concluded that Henry's evidence is neither credible nor reliable. His testimony changed substantially between direct and cross-examination. In chief, for the most part, he gave responsive answers to the questions put to him by his counsel. In cross-examination,

his answers were frequently unresponsive to the question. This was a pattern that continued through the cross-examination, even though he was cautioned several times to give responsive answers.

- [443] Particularly during cross-examination, in my view, his answers were tailored, arguing his case rather than an attempt to accurately and honestly answer. There were substantial inconsistencies in his evidence with respect to matters that are of considerable relevance to the case. Despite his counsel's valiant attempt to reconcile his evidence with respect to his assertions with respect to his contribution to the purchase of the McMaster Property, in my view, his testimony presents different and irreconcilable accounts.
- [444] Henry's evidence is frequently at odds with other independent evidence which I have accepted. For example, Henry's evidence with respect to Cher's involvement in the 1999 Will is contradicted by the evidence that as she was not in Canada at the time the will was created as evidenced by her passport and Dr. Lin's evidence that his wife used that passport when travelling to and from Taiwan. Henry eventually also conceded that Cher used her Taiwanese passport for such travel.
- [445] There are numerous instances in which his evidence at trial was inconsistent with his examination for discovery testimony and an affidavit sworn in these proceedings. For example, he testified at trial that Pearl was at home cooking or cleaning at the time of the Second Meeting. On his examination for discovery, he stated that she came to the lawyer's office but stayed in the car.
- [446] Henry stated in the affidavit dated April 17, 2019 that his eldest brother, Chien-Ming, received none of the proceeds of sale from the Hangzhou Property. At trial, he admitted this was not true and that he did transfer NT \$6 million to his eldest sister-in-law's account from the sale proceeds on August 12, 2013. He asserted that this was a loan to his eldest brother. Chien-Ming stated that this was a loan to him with no set terms of repayment, no portion of which has been repaid.
- [447] Pearl's evidence suffered, albeit to a more limited extent, from many of the same problems as Henry's. She was evasive and unresponsive during cross-examination, even after being cautioned by the court. Her evidence with respect to the 1999 Will suffers from the same defects as Henry's. I have concluded that her testimony was not credible. Her responses were not a sincere effort to recall and answer honestly but a story told to argue the case.

Ms. Adrian

- [448] I accept that Ms. Adrian believes that Mrs. Hsu intended to transfer the McMaster Property to Henry and instructed her to do so. I accept that she is a credible witness who is making a sincere attempt to give an honest recollection of the facts. However, I have concluded that there are significant problems with the reliability of her evidence. These include:

- a) These events occurred many years ago. The file occupied a relatively small amount of time. Until the matter was raised with the lawyer's letter in 2014, Ms. Adrian had no occasion to revisit the matter.
- b) Her notes are very sparse. For example, she did not make notes that set out her specific advice to Mrs. Hsu, her notes do not reflect who was doing the translation, and who said what. She did not make any notes of the Second Meeting.
- c) There are significant differences between her testimony at trial and the response contained in the firm's letter of March 14, 2014, in particular, that there was a second part to the May 19, 2009 meeting attended only by Ms. Tsang, Mrs. Hsu and Angela's presence at the Second Meeting. Ms. Adrian contends that her recollection is clearer today than it was in 2014. I find this to be unlikely. It is far more likely, in my view, that Ms. Adrian's memory has evolved as a consequence of reconstruction and exposure to other material in the litigation.
- d) While Ms. Adrian testified about Mrs. Hsu's instructions and discussion with her, she was totally reliant on the interpretation and could not communicate with Mrs. Hsu directly. Ms. Adrian did state that she recalls Mrs. Hsu speaking English with an accent. I am satisfied that this did not occur. Mrs. Hsu could not communicate in English beyond simple greetings and a few phrases. It could be that Ms. Adrian has mistaken her recollection of Pearl for Mrs. Hsu since Pearl does have considerable facility with English.

Ms. Tsang

- [449] The central issues with respect to the testimony of Ms. Tsang is whether she translated for Mrs. Hsu during any part of the two meetings with Ms. Adrian and the related issue of whether there was a period during the First Meeting when Henry and Pearl were asked to leave and Ms. Adrian reviewed matters privately with Mrs. Hsu with Ms. Tsang translating.
- [450] I found Ms. Tsang's evidence with respect to these two issues both credible and reliable. It is consistent with the weight of the evidence concerning Mrs. Hsu's ability to speak and understand Mandarin.

Angela and Eric

- [451] I have concluded that Eric's evidence with respect to the Second Meeting is not credible and reliable. Eric is a witness closely allied with Henry's family. His account was not plausible.
- [452] I found Angela to be a credible and reliable witness. She was not impeached successfully with respect to having a financial motive to testify as she did. She had no knowledge of what, if any benefits might come to her should the house be recovered to the estate.
- [453] With respect to the key elements of her testimony - whether she translated at the Second Meeting and whether she and Mrs. Hsu were driven to the Second Meeting by Eric - I found her testimony to be the most plausible.

Did Henry pay for all or half of the purchase price of the McMaster Property?

[454] After the 1997 conveyance, Mrs. Hsu was the sole registered owner of the McMaster Property. As such, she is deemed to be the conclusive owner, pursuant to s. 23(2) of the Land Title Act, R.S.B.C. 1996, c. 250.

[455] The defendants submit that Henry paid for half of the purchase price in 1997 when the McMaster Property was purchased. Counsel submits that, while the property was registered in Mrs. Hsu's name, Mrs. Hsu and Henry intended that he would be a part owner of that property. Counsel submits that a purchase money resulting trust presumes that the person who paid the funds for a property but does not take legal title, holds a beneficial interest in the property, citing *Nishi v. Rascal Trucking Ltd.*, 2013 SCC 33 [Nishi] at paras. 1-2.

[456] In *Nishi*, Justice Rothstein, for the Court, described the doctrine of the purchase money resulting trust as follows at paras. 1-2.

[1] A purchase money resulting trust arises when a person advances funds to contribute to the purchase price of property, but does not take legal title to that property. Where the person advancing the funds is unrelated to the person taking title, the law presumes that the parties intended for the person who advanced the funds to hold a beneficial interest in the property in proportion to that person's contribution. This is called the presumption of resulting trust.

[2] The presumption can be rebutted by evidence that at the time of the contribution, the person making the contribution intended to make a gift to the person taking title. While rebutting the presumption requires evidence of the intention of the person who advanced the funds at the time of the advance, after the fact evidence can be admitted so long as the trier of fact is careful to consider the possibility of self-serving changes in intention over time.

[457] I agree with the plaintiffs that who paid the purchase price for McMaster Property is not a direct issue in the case because the defendants have not filed a counterclaim. However, the issue is important with respect to the issue of Henry and Pearl's credibility. In addition, the issue is relevant to the accuracy of the Declaration of Trust that Mrs. Hsu signed on May 21, 2009.

[458] This issue must be considered in the context of the character of Mrs. Hsu and the communications among family members. The witnesses all agree that Mrs. Hsu was an extremely devout woman. She was honest, fair and straightforward. At least until the disputes arose among family members in 2013 and the years following, this family was extremely open about financial matters. The financial arrangements among family members were numerous and open.

- [459] In that context, it is extremely telling that the family members understood that the McMaster Property was Mrs. Hsu's house. Mrs. Hsu referred to the McMaster Property as her house in circumstances in which there was no reason to keep Henry's contribution a secret. She was an honest person who would not misrepresent the situation. No one other than Henry and Pearl, whose testimony I do not accept as credible, testified that Henry or Mrs. Hsu told them that he had contributed to the purchase.
- [460] Henry has testified that he discussed his contribution and putting the house in Mrs. Hsu's name with his eldest sister, Cher, who is deceased. The court does not have the benefit of her testimony. However, given the openness of this family about financial matters, it is likely in my view, that if Cher had such a conversation with Henry, she would have discussed it with her husband. Yet Dr. Lin gave no such evidence. On the contrary, his evidence was that he understood that Mrs. Hsu owned the property, and had provided the funds for its purchase.
- [461] Henry testified that Mrs. Hsu repeated to other family members that he had paid half. As noted above, I have concluded that his evidence is not credible. His contention is not supported by the evidence of other family members.
- [462] Frank testified that Mrs. Hsu told him that she wanted him to sell her stocks and forward the proceeds to Vancouver because she intended to buy a house. Her stated intention was to provide a safe haven for her family members. I accept that is what she told him. If her intention was to purchase a home with Henry, I believe she would have said so. It is not plausible that she would have then changed her mind and not used the funds for the purchase as Henry contends.
- [463] Henry and Pearl testified that they heard Mrs. Hsu tell Sophia Cummings repeatedly at the time of the conveyance that Henry had paid half and the property should be accordingly registered to reflect that.
- [464] I find that this did not occur and their testimony is, in this respect, a fabrication. There is no note of such an instruction in the file. Ms. Cummings recalled no such instruction and this proposition was not put to Mr. Cummings. If such an instruction had been given, it would surely have been followed, particularly since, as plaintiff's counsel points out, the bank draft was issued in Henry's name. Moreover, it was clear that the title was not registered in joint names. Yet Henry did nothing to rectify the issue at the time or apparently at any time until 2009.
- [465] I agree with the submission of the plaintiff that Henry's evidence with respect to the purchase of the McMaster Property was contradictory and irreconcilable. Defendants' counsel has submitted that Henry's testimony is not inconsistent and that Henry, at no point in time, advanced the position that he alone paid for 100 percent of the purchase of the McMaster Property without some contribution from Mrs. Hsu. With respect, in my view, this contention is not correct. Henry did advance at various points in his testimony and examination for discovery that he paid the entire purchase price.

- [466] Counsel submits that Henry was confused because at the time of his examination for discovery he did not have the benefit of the Taiwanese banking documents. My view is that while one might be confused about the exact amounts or the timing of transfers, a person in Henry's financial circumstances would not forget or be confused about whether he had contributed nothing, \$400,000 or nearly \$900,000 CDN of his own funds with respect to the purchase of the McMaster Property.
- [467] One version of Henry's evidence rests on the fact that he had enough money in Taiwan to pay for the purchase price. However, he cannot trace the use of those funds to the purchase. He had sufficient funds if he did not use his funds to purchase the Tolmie Property. However, Frank testified, and I accept, that Henry told him that he required NT \$6 million to purchase the Tolmie Property and those funds were transferred to Henry's account on February 21, 1997 coincidentally with the purchase and months before McMaster was on the horizon. In addition, while at some points in his testimony Henry stated that his eldest brother contributed funds to the purchase of Tolmie, Henry also testified that he was entitled to the entire sale proceeds when the property was sold because he had used his own funds to purchase the property.
- [468] Another version of Henry's evidence was that Mrs. Hsu deposited some or all of her funds in an RBC Dominion Securities Account and therefore, did not have sufficient funds to finance the purchase of the McMaster Property. However, there are no statements for such an account from the relevant period to corroborate this claim. In addition, I accept Frank's evidence that Mrs. Hsu told him that she wanted the money from the sale of her shares for the purchase of a house. It is not plausible that she would then change her mind and put the funds into savings instead.
- [469] Yet another version of Henry's evidence was that Mrs. Hsu contributed to the purchase of the McMaster Property by putting NT \$8 million that Chien-Ming owed to her with respect to the purchase of the Toucheng property that was put in Eric's name.
- [470] I agree with plaintiff's counsel that Henry's evidence was extremely confusing on this point as it was not clear whether he was saying that these funds were given by Mrs. Hsu to him so that he had funds to contribute or that this was her contribution to the purchase price. There are no documents evidencing such a debt. In any event, Chien-Ming denied that he owed Mrs. Hsu any of the NT \$8 million that he was to pay at the relevant time. Accepting his evidence on this point, there was no such debt owing to Mrs. Hsu at the time of the McMaster purchase.
- [471] Henry's evidence with respect to the source of his contribution is also inconsistent. He claimed that it was his own money from the sale of shares in Taiwan. However, he also claimed that his mother had loaned him \$400,000 CDN for his half of the purchase price. There is no independent evidence supporting this contention.

- [472] Ms. Adrian testified that at the First Meeting, Mrs. Hsu told her that Henry had paid for half of the purchase price. I accept from the documents Ms. Adrian drafted that someone told Ms. Adrian that this was the case and that she accepted this representation as true.
- [473] However, it was clearly not Mrs. Hsu who made this statement to Ms. Adrian. The weight of the evidence is clear that Mrs. Hsu did not speak and could not understand English beyond a few simple phrases. She had no way of communicating directly with Ms. Adrian, who did not speak either Mandarin or Taiwanese.
- [474] Ms. Adrian testified that she recalls Mrs. Hsu speaking to her in English, albeit with a heavy accent. I am satisfied that her recollection is mistaken and that the speaker she recalls is Pearl.
- [475] I find that the representation did not come from Ms. Tsang. Her evidence, on this point, which I accept, is that the first she had ever heard about Henry contributing to the purchase was when Ms. Adrian made that statement at the First Meeting. Neither Henry nor Pearl had ever said this to her. Mrs. Hsu had never told her this.
- [476] It follows that either Henry or Pearl or both made this false representation to Ms. Adrian in circumstances in which neither Mrs. Hsu nor Ms. Tsang were in a position to question the statement.
- [477] The defendants presented an analysis of the banking and property transactions in Taiwan in support of the contention that Henry contributed to the purchase of McMaster Property. However, as noted above, the documentary records are incomplete such that a forensic tracing is not possible. In the end, critical gaps are filled by Henry's testimony. However, I do not accept Henry's testimony as truthful and reliable.
- [478] In the result, I find that Henry has not established that he contributed any portion of the purchase price for McMaster Property. I am satisfied that Mrs. Hsu paid the whole of the purchase price with the NT \$20 million proceeds of the sale of shares in Taiwan that she requested be transferred in 1997.

In 2009 did Mrs. Hsu relinquish the entire interest, ownership and control of the McMaster Property during her lifetime?

Donative Intent

- [479] In order for there to be an inter vivos gift, the donor must have intended to make a gift. The intention of the donor at the time of the transfer is the governing consideration: *McKendry v. McKendry*, 2017 BCCA 48 at para. 31. And see *Bakken Estate v. Bakken*, 2014 BCSC 1540 at paras. 74-75.
- [480] Where a transfer of land is gratuitous, the presumption of resulting trust may displace the presumption of indefeasible title, see *Fuller v. Harper*, 2010 BCCA 421 at para. 43. The operation of that doctrine is described by Justice Smith, for the Court:

- [44] Pecore is the leading decision on the application of the presumption of resulting trust in circumstances of a gratuitous transfer. The presumption is "a legal assumption that a court will make if insufficient evidence is adduced to displace the presumption" (Pecore at para. 22). It arises when "title to property is in one party's name, but that party, because he or she is a fiduciary or gave no value for the property, is under an obligation to return it to the original title owner: Waters' Law of Trusts in Canada (3d ed. 2005), at p. 362" (Pecore at para. 20).
- [45] Mr. Justice Rothstein, writing for the Court, explained how the burden of proof is affected by the presumption of resulting trust:
- [24] [W]here a transfer is made for no consideration, the onus is placed on the transferee to demonstrate that a gift was intended: see Waters' Law of Trusts, at p. 375, and E.E. Gillese and M. Milczynski, *The Law of Trusts* (2nd ed. 2005), at p. 110. This is so because equity presumes bargains, not gifts.
- Therefore, the onus is on the transferee to lead evidence of "the transferor's contrary intention on the balance of probabilities" in order to rebut the presumption (Pecore at para. 43).
- [46] Rothstein J. also explained the methodology to be employed when the presumption of resulting trust is engaged:
- [44] ... The trial judge will commence his or her inquiry with the applicable presumption and will weigh all of the evidence in an attempt to ascertain, on a balance of probabilities, the transferor's actual intention. ...
- ...
- [55] Where a gratuitous transfer is being challenged, the trial judge must begin his or her inquiry by determining the proper presumption to apply and then weigh all the evidence relating to the actual intention of the transferor to determine whether the presumption has been rebutted....
- [47] The effect of the presumption only becomes evident after all the evidence, both direct and circumstantial, on the surrounding circumstances in which the transfer was made, has been weighed. Only if the trial judge is unable to reach a conclusion about the transferor's actual intention at the time of the transfer, will the presumption be applied to tip the scales in favour of the transferor or his estate: Sopinka, Lederman & Bryant, *The Law of Evidence in Canada*, 3d ed. (Markham, ON: LexisNexis Canada, 2009) at page 159, § 4.60.
- [481] In *Pecore v. Pecore*, 2007 SCC 17 at paras. 45-47, Justice Rothstein noted that the relevant time with respect to the question of the donor's intent is at the time of the transfer. Evidence of subsequent conduct is admissible provided that it goes to the issue of the donative intent at the time of transfer.

- [482] Neither the registration nor the deed of gift is dispositive of the issue as discussed in *Kalanj v. Kalanj Estate*, 2022 BCSC 427:
- [44] The defendants rely on s. 23(2) of the Land Title Act, R.S.B.C. 1996, c.250 [LTA] which provides that an uncanceled indefeasible title is "conclusive evidence at law and in equity, as against the Crown and all other persons, that the person named in the title as registered owner is indefeasibly entitled to an estate in fee simple to the land described in the indefeasible title", absent certain exceptions which have no application here.
- [45] Justice Savage (then of this Court) in *Fleming v. Kwakseestahla*, 2010 BCSC 1006 at para. 22 [Fleming], considered whether s. 23(2) of the LTA negates the presumption of a resulting trust in BC when applied to land. Justice Savage determined that the operation of s. 23(2) of the LTA does not oust the operation of other principles of law and equity, outside circumstances involving the acquisition of title by a bona fide purchaser for value: Fleming at para. 24. Ultimately, Justice Savage concluded that, despite the provisions of the LTA, where there is a transfer without consideration, there is a presumption of a resulting trust: Fleming at para. 26.
- [46] Similarly, Justice Groves noted in *Modonese* at para. 139, that Fuller (at para. 43) appears to support the view that the presumption of a resulting trust could be applied to a gratuitous transfer of real property. He found that, because the transfer of the deceased's property into joint tenancy was gratuitous, the presumption of resulting trust discharged the statutory presumption: *Modonese* at para. 142. These authorities support the conclusion that the statutory presumption in the LTA does not displace the equitable presumption of a resulting trust, as does *Suen v. Suen*, 2013 BCCA 313 at para. 34.
- [53] None of the affidavits filed on this summary trial has been tested on cross-examination. The parties have not been examined for discovery. I am unable to assess the parties' credibility or the reliability of the conflicting affidavit evidence. I am unable to examine the circumstances surrounding the Deceased's execution of the documents necessary to give effect to the Transactions. I do not know what, if any, inquiries Mr. Bjurman made of the Deceased before those documents were signed. These gaps and conflicts in the evidence preclude me from finding the facts necessary to determine whether or not the presumption of a resulting trust is rebutted.
- [483] While the authorities state that the documents are not determinative of the issue of donative intent, one fundamental question that must be addressed is whether the documents that were executed reflect Mrs. Hsu's intentions. Addressing this issue is complicated by the fact that there are strikingly different accounts of the two meetings which culminated in the signing of the transfer documents. Further, I have concluded that none of Henry, Pearl or Ms. Adrian provide reliable accounts of what transpired. Ms. Tsang's account is credible and reliable, but her participation was limited.

- [484] The First Meeting is where the instructions were given. Ms. Adrian testified that Mrs. Hsu told her that Henry had paid for half and that resulted in the document reflecting that Mrs. Hsu held half her interest in trust for Henry. As discussed above, I have concluded that this was a false representation made to Ms. Adrian. Henry did not pay for half the purchase price and Mrs. Hsu had no intention of documenting that state of affairs.
- [485] Ms. Adrian testified that Mrs. Hsu wanted to give McMaster to Henry and it was Henry who at the outset wanted to give the property to Lih Wen. This evidence is not consistent with Henry and Pearl's account. Other than the documents she drafted, there is no other evidence supporting this version of events. It is inconsistent with the intentions that Mrs. Hsu stated to family members prior to the meeting.
- [486] Henry and Pearl's evidence was to the effect that Mrs. Hsu wanted to benefit Lih Wen. Then when Ms. Adrian was told of Henry's contribution she stated this needed to be documented. Pearl's testimony was to the effect that at the end of the first meeting they understood that Henry was to have half and the other half to Lih Wen. Of course, that is not what the documents reflect.
- [487] Ms. Adrian contends that at the end of the First Meeting, she met with Mrs. Hsu and Ms. Tsang without Henry and Pearl being present and reviewed and confirmed all of the instructions. I have concluded that this did not occur. As noted above, no other participant stated that this had occurred. In any event, I am satisfied that Ms. Tsang could not have translated for Mrs. Hsu and did not undertake to do so.
- [488] The first matter to be resolved with respect to the Second Meeting is whether Eric drove Mrs. Hsu and Angela to that meeting and, if so, whether Mrs. Hsu stated that the purpose of the meeting was to transfer McMaster Property to Henry and Lih Wen and that Angela was there to translate. Angela's evidence was that she was never told that she was there to translate and that she drove herself to the meeting in her rental car. She recalled entering the address on the GPS.
- [489] I prefer Angela's evidence with respect to this issue. I find that Eric did not drive Angela and Mrs. Hsu to the meeting and that he did not hear the statements made by Mrs. Hsu that he described in his testimony. I note that his account is not plausible. There was no reason for Eric to attend this meeting. There was no need for him to drive in the middle of what was for him a workday. Angela had her own vehicle. Henry and Lih Wen were driving to the meeting. There was no reason for Angela to drive to McMaster, transfer cars and be driven to the lawyers.
- [490] Henry and Pearl are like second parents to Eric, and Lih Wen is like a brother to him. They have remained close. I believe that his testimony is the result of a misplaced sense of loyalty to the family.

- [491] The next crucial issue is whether Angela translated the documents for Mrs. Hsu. She testified that she was never asked to translate and did not do so. It was her evidence that her knowledge of Taiwanese did not extend to translating legal documents and that if she had been asked, she would have retained a translator. In addition, I am satisfied that both Angela's and Mrs. Hsu's knowledge of Mandarin was limited and not equal to the task of translating and comprehending legal documents.
- [492] It is clear from the evidence of family members, Ms. Tsang and the assistant's note that Mrs. Hsu wanted to make some sort of gift to Lih Wen relating to the McMaster Property.
- [493] I agree with the plaintiff that the evidence does not support an informed and independent intention on the part of Mrs. Hsu to relinquish her entire interest, ownership and control of the McMaster Property during her lifetime to Henry or indeed, to Lih Wen.
- [494] By all accounts, Mrs. Hsu was a woman who was intelligent, a shrewd investor, and someone who made good financial decisions. I accept that she frequently told Chun-Yen that a parent must protect themselves financially, "water doesn't flow uphill", meaning that a child will never have the same love for a parent as a parent has for the child.
- [495] Mrs. Hsu often repeated that you cannot give all your money to your children when you are elderly. You must keep enough to secure your old age and "money is the most filial child". She recognized that she was responsible for her own financial security.
- [496] It is also clear that it was important to Mrs. Hsu that she have a home of her own. This is reflected in the fact that although she had been living at the West 11th Property with Henry and Pearl after moving to Canada, she wanted to purchase a home of her own. Similarly, when she returned to Taiwan in 2013 she purchased a property.
- [497] I accept that she told Frank and Chun-Yen that she would not transfer her property to someone else during her lifetime. Sophia Cummings testified that she recalls advising Mrs. Hsu at the time of the preparation of the 1999 Will that she could always change her will and that she could also transfer her property during her lifetime. However, she took no steps to do so prior to 2009.
- [498] I also accept the evidence that prior to these events, Mrs. Hsu told family members that her plan was to leave the McMaster Property to Henry after her death on the understanding that she would live there and be cared for during her life and not sent to a care home.
- [499] There is simply no evidence of Mrs. Hsu suggesting that she intended to make a gift of the McMaster Property to Henry during her lifetime prior to the First and Second Meetings.

- [500] I accept that in 2009 she did state to family members that she intended to gift the McMaster Property to Lih Wen. However, I am satisfied that to the extent to which she clarified her intentions she expressed an intention that this was to occur after her death. Indeed, Lih Wen understood from speaking with his grandmother shortly before the meetings that the purpose of the meeting was estate planning and that he was to receive a gift of property to take effect after her death.
- [501] I agree with the plaintiff that Mrs. Hsu's conduct and statements following 2009 is consistent with her lack of intention to have made an immediate gift in 2009 of her interest in the McMaster Property such she had lost all use and control over the property.
- [502] There is no evidence that between 2009 and 2013 Mrs. Hsu told anyone that the McMaster Property had been transferred to Henry. Given, as noted above the openness in this family about financial matters, I find that it is unlikely that she would have failed to do so if she knew and intended that this had occurred.
- [503] I accept that after her return to Taiwan in 2013, Mrs. Hsu told Chun-Yen she no longer intended to leave the McMaster Property to Henry on her death. Instead, she wanted to leave the house to the children who took care of her. This is consistent with her belief that she still had ownership and control over the McMaster Property and is inconsistent with an intention in 2009 to dispose of all of her interest in that property to Henry.
- [504] Further, Mrs. Hsu's reaction upon being told that she no longer owned the McMaster Property is telling evidence with respect to her intention in 2009. Her reaction was unequivocal and inconsistent with having had the intention to make an immediate gift of the McMaster Property.
- [505] The defendants submit that Mrs. Hsu's reaction can be explained by a decline in her memory and mental acuity such that she forgot that she had transferred the property. I find that this is not the case. In that regard, I prefer the evidence of Dr. Lin and Dr. Hsiao, the two physicians who treated Mrs. Hsu from her move to Canada to her death in Taiwan in 2016. Neither reported any concern with respect to her mental acuity or found the need for a referral for testing. In addition, Dr. Hsiao notes that Henry and Pearl expressed no concern to him with respect to Mrs. Hsu's mental state.
- [506] The defendants contend that Henry had contributed to the purchase of McMaster Property and that Mrs. Hsu instructed Ms. Adrian to draft documents reflecting his half-interest. As noted above, I have found that Henry did not contribute to the purchase price of McMaster and that while I accept that the instruction was given to Ms. Adrian, it was not given by Mrs. Hsu.
- [507] In all of the circumstances, I am satisfied that Mrs. Hsu did not have the intention to make an immediate inter vivos gift of McMaster Property.

Non Est Factum

- [508] Mrs. Hsu signed documents that on their face had the effect of transferring both legal and beneficial ownership of the McMaster Property to Henry. The question arises whether she understood the nature of the documents that she signed.
- [509] Where a party has mistaken the nature of a written document, the document can be declared to be invalid, void and or unenforceable on the basis of non est factum. The principles are stated by Justice Dardi in *Farrell Estates Ltd. v. Win-Up Restaurant Ltd.*, 2010 BCSC 1752 [Farrell Estates]:
- [100] The principles of non est factum, as formulated in the weight of the authorities, can be summarized as follows:
1. The burden of proving non est factum rests with the party seeking to disown their signature. For a person of full capacity the application of the doctrine must be kept within narrowly prescribed limits.
 2. The person who seeks to invoke the remedy must show that the document signed is fundamentally different from what the person believed he or she was signing.
 3. Even if the person shows such a fundamental difference, the court must examine whether the signer was careless in failing to take reasonable precautions in the execution of the document. The court must also consider the conduct of the party relying on the document and whether they qualify as an innocent party, in order to determine which party, by application of reasonable care, was in the better position to avoid the loss.
- [101] The authorities also establish that non est factum may be raised as a defence notwithstanding a lack of agency between the party relying on the document and the person who made the alleged misrepresentation concerning the document: *Marvco; J. R. Watkins Company v. Hannah*, [1926] 2 W.W.R. 800 (Sask. C.A.).
- [510] In assessing the issue, the personal characteristics of the party raising the defence including their capabilities and literacy are relevant considerations, see *Farrell Estates* at para. 130 and *Van Der Ros v. Van Der Ros*, 2003 BCCA 270 at para. 11.
- [511] The doctrine applies in circumstances in which the party does not speak English, see *Garcia v. Garcia*, [1986] A.J. No. 560 (K.B.) and *Di Giacomo v. Di Giacomo*, 2021 BCSC 2313. Where a party does not read and comprehend English, it is not careless for them to sign without reading the document where it was provided by a trusted advisor. It is reasonable in such circumstances for the party to rely on the trusted advisor's explanation of the document: see *Zhang v. Soong*, 2012 BCSC 758 at para. 95.

[512] Whether the party had independent legal advice is a relevant but not determinative factor, see *Royal Bank of Canada v. 966566 Ontario Inc.*, [2000] O.J. No. 606 (Ont. S.C.J.) at para. 17 and *Farrell Estates* at para. 139. Factors to consider in assessing the sufficiency of the legal advice include those set out in *Young v. Veselic*, 2022 BCSC 697 at para. 83

[83] In assessing the last factor, being the quality of the legal advice, the court will consider the following subfactors (the so-called "Coish" factors):

- i. whether the recipient was present at the time the advice was given and/or at the time the documents were executed;
- ii. whether, though technically acting for the donor, the lawyer was engaged by and took instructions from the recipient;
- iii. in a situation where the proposed transaction involves the transfer of all or substantially all of the donor's assets, whether the lawyer was aware of that fact and discussed the financial implications with the donor;
- iv. whether the lawyer enquired as to whether the donor discussed the proposed transaction with other family members who might otherwise have benefited if the transaction did not take place;
- v. whether the lawyer discussed other options whereby the donor could achieve their objective with less risk;
- vi. whether the lawyer confirmed the donor's understanding of the transaction and their voluntariness to do so;
- vii. whether the lawyer advised the donor as to the merits or wisdom of the transaction; and
- viii. whether the lawyer was satisfied the transfer was right and proper, in all the circumstances of the case.

[513] In the present case, I have concluded that Mrs. Hsu went to the lawyer's office with the intention of retaining beneficial ownership and control of the McMaster Property during her lifetime and gifting the property to her grandson Lih Wen on her death. The effect of the documents she executed were contrary in every respect to her intention. She lost both control and beneficial ownership in her lifetime and the recipient was not Lih Wen but Henry. Lih Wen did not even receive a beneficial interest after Henry's death.

[514] Mrs. Hsu could not communicate directly with Ms. Adrian. She could not speak or understand English beyond a few simple phrases. Ms. Adrian could not speak or understand Mrs. Hsu. Mrs. Hsu trusted and relied upon Henry and Pearl to communicate her wishes and intentions as they had done throughout their time in Canada. She trusted Ms. Adrian, a member of a profession she greatly respected, to translate her intentions into legal documents. In doing so, she cannot be characterized as careless or unreasonable.

- [515] Henry and Pearl are the persons who rely upon the documents. They can hardly be characterized as innocent parties since they were responsible for the communication between Mrs. Hsu and Ms. Adrian.
- [516] In the circumstances, I find that Mrs. Hsu did not have independent legal advice. Although she was present for the First and at least part of the Second Meetings, she could not communicate directly with Ms. Adrian.
- [517] Ms. Adrian was under two fundamental misconceptions with respect to Mrs. Hsu's wishes: (1) that Henry had contributed 50 percent of the purchase price and Mrs. Hsu wished to formalize this; and (2) that Mrs. Hsu wanted to make an immediate gift of the McMaster Property to Henry.
- [518] Ms. Adrian understood that it was Henry who wished to make a gift to Lih Wen. Mrs. Hsu received no legal advice with respect to how one might achieve and structure what she actually intended. The only risk that was identified by Ms. Adrian was directed to Henry and Pearl's interests.
- [519] Ms. Adrian was emphatic that Mrs. Hsu was her sole client. She states that she advised Henry to get independent legal advice and told him that she was not giving him any advice, only witnessing his signature. Yet she clearly did give him legal advice that formed the backbone of the structure of the documents she drafted. In any event, she was receiving instructions from the recipient.
- [520] This was by any reckoning, a substantial gift. Ms. Adrian had, on any view of the evidence, only the most cursory information about the extent of Mrs. Hsu's assets. She was not in a position to and did not provide Mrs. Hsu with advice about the financial implications of the transaction.
- [521] She assumed that Mrs. Hsu would have enough assets to support herself on the assumption that she would continue to live with Henry and Pearl. However, it is common ground that there was no discussion of the financial impact on Mrs. Hsu in the event that she would not live with Henry and Pearl for the rest of her days.
- [522] Ms. Adrian did inquire about the possible reaction of other family members and was given assurances that they would not object. But this was in the context of a discussion about a transaction that was fundamentally different from what Mrs. Hsu had come to the office to effect.
- [523] Ms. Adrian did not discuss other options with Mrs. Hsu nor did she discuss the risks of the transaction with her. She did not discuss the merits of the transaction with Mrs. Hsu.
- [524] Ms. Adrian contends that at the end of the First Meeting, she met with Mrs. Hsu and Ms. Tsang, without Henry and Pearl being present, and reviewed and confirmed all of the instructions.

- [525] I have concluded that this did not occur. As noted above, no other participant stated that this had occurred. In any event, I am satisfied that Ms. Tsang could not have translated for Mrs. Hsu and did not undertake to do so.
- [526] I have also concluded that no one provided a translation of the documents for Mrs. Hsu at the Second Meeting. In the result, Ms. Adrian did not confirm her instructions with Mrs. Hsu, nor did she ascertain if Mrs. Hsu understood the effect of the documents.
- [527] I accept that Ms. Adrian was satisfied the transaction was "right and proper" in the circumstances. However, her satisfaction rested upon a combination of a fundamentally flawed understanding of the underlying facts and Mrs. Hsu's intentions coupled with an inadequate inquiry into the circumstances.
- [528] I find that Mrs. Hsu did not intend to make an immediate inter vivos gift of McMaster Property. I am satisfied that Ms. Adrian did not receive an accurate account of Mrs. Hsu's intentions and instructions.
- [529] The documents that she created did not reflect Mrs. Hsu's intentions. I am satisfied that the documents Mrs. Hsu signed were fundamentally different from what she believed she was signing.
- [530] I am satisfied that Mrs. Hsu did not receive proper interpretation. The documents were never explained to her. In the circumstances, I am satisfied that she did not receive appropriate independent legal advice in the circumstances in which she was purporting to give away her home to her caregiver.
- [531] She placed her trust in Henry and Pearl to convey her wishes and in the lawyer to implement those wishes. Her faith was misplaced but it was not careless or unreasonable of her to rely upon them.

Disposition

- [532] In the result, I am satisfied that Mrs. Hsu did not have the requisite donative intent to make an immediate inter vivos gift of the McMaster Property and that the documents she signed were fundamentally different from what she believed she was signing such that the doctrine of non est factum applies.
- [533] In the circumstances, I do not propose to deal with the plaintiff's submissions concerning conditional gift, unconscionable procurement, and unjust enrichment.
- [534] The defendants submitted that if the deed of gift is invalid, then Henry deposited the funds from the proceeds of sale of the Hangzhou Property into Mrs. Hsu's account in 2013 and was made under the mistaken impression that she did not have sufficient means to support herself.

- [535] The defendants submit that Henry is entitled to return of the funds pursuant to the doctrine of payment under mistake of fact, citing *B.M.P. Global Distribution Inc. v Bank of Nova Scotia* (c.o.b. Scotiabank), 2007 BCCA 52 at paras. 36-43.
- [536] The plaintiff notes that there is no counterclaim pleading relief on this basis. In any event, I agree with the plaintiff's submission that this claim is inconsistent with Henry's evidence about the reason he transferred NT \$20 million to his mother. I find that this claim is not made out.
- [537] The defendants submit that Frank mismanaged Mrs. Hsu's affairs in the period between 2013 and her death in 2016. It is submitted that these actions are suspicious and offend the doctrine of clean hands.
- [538] In addition, the defendants submit that Te-Yung engaged in secretive and suspicious actions that violate the doctrine of clean hands, including: his conduct during the guardianship applications in Taiwan, his recording of telephone calls with Mrs. Hsu of Henry, Pearl and Chien-Ming in 2013, and a criminal complaint with respect to Henry.
- [539] The defendants submit that these actions offend the doctrine of clean hands and as such, the plaintiff is disentitled from any equitable relief, citing *Khela v Clarke*, 2022 BCCA 71 at paras. 27, 34-40.
- [540] In my view, this claim cannot succeed. I note that the factual foundation for the defendants' allegations in relation to this issue are disputed by the plaintiff. However, in my view, the defence cannot succeed for two reasons, quite apart from the dispute with respect to the facts. First, the claim for recovery relating to donative intent and non est factum is based on common law grounds and the doctrine of clean hands has no application. In addition, the alleged conduct of non-parties cannot amount to an absence of clean hands disentitling the plaintiff to relief.
- [541] I find that judgment is granted in favour of Mrs. Hsu's estate. I make the following orders:
- a) A declaration that the McMaster Property is held in trust for the Estate of A-Tui Hsu and her personal representative;
 - b) An order that the defendants convey title to the McMaster Property to the personal representative of A-Tui Hsu's estate, when a grant of probate is issued; and
 - c) An order that the defendants pay the costs of the plaintiff.

"C. Ross J."

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