

CANADA / JUDGMENT

Ishrat v. Anwar

2023 BCSC 1838

COURT

Supreme Court of British Columbia

DECIDED

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2023 BCSC 1838 Ishrat v. Anwar

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Ishrat v. Anwar,

2023 BCSC 1838

Date: 20231019

Docket: S229144

Registry: New Westminster

Between:

Nabeela Ishrat

Plaintiff

And

Ali Anwar and Sheeraz Anwar

Defendants

And

Shahbaz Khan

Defendant by Counterclaim

Before: The Honourable Mr. Justice Riley

Reasons for Judgment

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Place and Date of Trial:

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November 14-18, 21-25, 2022

November 28 - December 2, 2022

April 24-28, 2023

Place and Date of Judgment:

New Westminster, B.C.

October 19, 2023

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Introduction

- [1] These are reasons for judgment following a lengthy trial on competing claims brought by two factions of an extended family. On the one side of the case are the plaintiff Nabeela Ishrat and the defendant by counterclaim Shahbaz Khan, who are brother and sister, and who are the aunt and uncle of the defendants. On the other side of the case are the defendants and counterclaimants Sheeraz Anwar and Ali Anwar, who are brothers, and who are the nephews of Ms. Ishrat and Mr. Khan.
- [2] The plaintiff Ms. Ishrat's principal claim is for an order declaring that she is the beneficial owner of a townhouse in Maple Ridge. The townhouse was purchased by and registered in the name of the defendants, the Anwars, using funds that originated from Ms. Ishrat. She claims that all of this was part of an arrangement in which she would fund the purchase,

with the Anwars -- who were able to obtain a mortgage when she was not -- thereafter holding the property in trust for her. The Anwars dispute this. They maintain that Ms. Ishrat and Mr. Khan gave them the funds for the down payment as compensation for work performed at a Mucho Burrito restaurant in Regina owned by Mr. Khan and operated by Ms. Ishrat.

- [3] The counterclaim brought by the Anwars seeks damages for conversion or unjust enrichment in connection with work performed at various businesses owned and operated by Ms. Ishrat and Mr. Khan. The Anwars claim to have been convinced to immigrate to Canada from Pakistan and thereafter manipulated by Ms. Ishrat and Mr. Khan into working at Mucho Burrito restaurants in Regina and Vancouver without being paid, based on hollow promises of future compensation. Sheeraz Anwar also advances discrete claims of conversion or unjust enrichment against Mr. Khan in connection with work performed at a Maaco autobody shop in Abbotsford, based once again on an unfulfilled promise of future compensation.

Facts

- [4] I will begin my review of the facts by identifying the parties and their relationships with each other. Because many of those involved in this case have the same last names, I will refer to the parties by their first names for ease of reference.

The Plaintiff Nabeela Ishrat

- [5] As noted in the introduction, the plaintiff Nabeela Ishrat ("Nabeela") is the sister of the defendant by counterclaim Shahbaz Khan ("Shahbaz"), and the aunt of the two defendants Sheeraz Anwar ("Sheeraz") and Ali Anwar ("Ali"). Nabeela is now 52 years old. She was born in Pakistan and immigrated to Canada in 1992 with her parents and siblings. Her family settled in Calgary.
- [6] Nabeela later got married in Pakistan to her husband Mohammad Safdar ("Mohammad"), after which the two of them returned to Canada and lived in Calgary. They have five children who are now 27, 24, 18, 14, and 12 years old respectively. Nabeela worked at a variety of jobs while raising her children. By the early 2010s, Nabeela and her husband owned a house in Calgary.
- [7] In 2013, Nabeela relocated to Vancouver with her four youngest children, although she did not sell the house in Calgary. Looking to start a business, and with some input from her brother Shahbaz, Nabeela decided to acquire a Mucho Burrito restaurant in Vancouver. At this point Shahbaz was familiar with the Mucho Burrito business model, having purchased his own Mucho Burrito franchise in Regina ("Mucho Burrito Regina") some three years earlier. After Nabeela acquired her Mucho Burrito restaurant in Vancouver ("Mucho Burrito Vancouver"), she and Shahbaz made an arrangement where Shahbaz would come to Vancouver to get Mucho Burrito Vancouver up and running, while Nabeela went to Regina to

operate Mucho Burrito Regina.

- [8] When she got to Regina, Nabeela and four of her children lived in a house owned by Shahbaz. It is common ground that Nabeela's nephews Sheeraz and Ali, after immigrating to Canada from Pakistan, worked for Nabeela at Mucho Burrito Regina. There is a dispute about their hours of work and the manner in which they were paid.
- [9] The evidence reflects that at some point in late 2014, there was a serious fire at Nabeela's house in Calgary, which was evidently being rented out to tenants at the time. After the fire, Nabeela's husband Mohammad assumed responsibility for renovating it. The evidence reflects that the renovations cost tens of thousands of dollars, although the exact amount is in dispute and the evidence does not allow me to resolve that issue, which is peripheral in any event.
- [10] In late 2015, Nabeela sold her house in Calgary and used some of the net proceeds to purchase a GIC. The GIC was cashed in or exchanged for a new GIC several times, with different parties being listed as joint owners. In June 2016, the existing GIC was cashed in, and another GIC was purchased in the names of Nabeela, her husband Mohammad, her brother Shahbaz, and her two nephews Sheeraz and Ali. Nabeela's position at trial was that this was done as part of an arrangement where Sheeraz and Ali would purchase a house and hold it in trust for her, as described below. Nabeela's position regarding the GIC was disputed at trial by Sheeraz and Ali, who claim that their names were placed on the GIC to compensate them for their previously unpaid work at Mucho Burrito Regina.
- [11] In the summer of 2016, the Anwar brothers purchased a townhouse in Maple Ridge. Nabeela says she allowed Sheeraz and Ali to have access to the GIC funds to purchase the Maple Ridge townhouse, as part of a proposal made by Sheeraz and Ali to buy and hold the property for her benefit, until she could qualify for a mortgage. Sheeraz and Ali deny this. They claim that Nabeela and Shahbaz gave them the funds in the GIC as compensation for their hitherto unpaid work at Mucho Burrito Regina, and that Sheeraz and Ali then used the funds to buy the Maple Ridge townhouse.
- [12] In early September 2016, some months after Shahbaz sold Mucho Burrito Regina due to its poor profitability, Nabeela and her four youngest children left Regina and relocated to the Lower Mainland of British Columbia. They arrived just in time for Nabeela's younger children to start the school year in British Columbia. Within a few days of her arrival in British Columbia, Nabeela and her family moved into the Maple Ridge townhouse, although there is a dispute between the parties as to the underlying circumstances.
- [13] After her arrival in the Lower Mainland, Nabeela worked with her brother Shahbaz in the management and operation of Mucho Burrito Vancouver, until it shut down in August 2017. It appears that Nabeela did not have another job until 2020, when she started working for Shahbaz at his second Maaco franchise in Langley.

The Defendant by Counterclaim Shahbaz Khan

- [14] The defendant by counterclaim Shahbaz Khan is Nabeela's brother and Sheeraz and Ali's uncle. Shahbaz is now 46 years old. He was born in Pakistan and immigrated to Canada in 1992, settling in Calgary.
- [15] Shahbaz is married with four children. He has multiple university degrees. While living in Calgary, he worked at a food processing facility and later at a bank.
- [16] In around 2009, Shahbaz and his family relocated to Regina. He claims to have done so as part of a plan to support the immigration of his extended family, including his nephews, Sheeraz and Ali. Shahbaz testified that he relocated to Saskatchewan because it would be easier for his nephews to gain permanent resident status in Saskatchewan, through what he referred to as the Saskatchewan Immigration Nominee Program ("SINP"). In Regina, Shahbaz got a job working for an insurance company, and eventually purchased a house on Nicurity Drive, where he lived with his wife and children.
- [17] In or around 2010, Shahbaz acquired his first small business, a Mucho Burrito restaurant in Regina (defined above as "Mucho Burrito Regina"). He personally managed the business until 2014, when he and his family relocated to Vancouver as described below, and Nabeela began running Mucho Burrito Regina. Shahbaz ultimately sold Mucho Burrito Regina in 2016.
- [18] Starting in about 2011, Shahbaz was in communication with his nieces and nephews, the Anwars, in Pakistan, with the objective of convincing them to immigrate to Canada. In separate conversations with all four Anwar siblings - Ayaz, Abida, Sheeraz, and Ali - Shahbaz urged each of them to come to Canada. His efforts were ultimately successful. The process took a number of years, but by 2016, all of four Anwar siblings had been granted admission to Canada, under Shahbaz's sponsorship.
- [19] Meanwhile, in 2014 Shahbaz and his family relocated to the Lower Mainland of British Columbia, where he operated a second Mucho Burrito restaurant that had been acquired by his sister Nabeela (defined above as "Mucho Burrito Vancouver"). Shahbaz initially assumed Nabeela's rental property on Jack Bell Drive in Richmond, and later purchased a house in Surrey, where he lived with his wife and children.
- [20] In 2016, Shahbaz sold Mucho Burrito Regina. Shahbaz and his sister Nabeela continued to operate Mucho Burrito Vancouver until 2017, when they decided to close the business due to its high lease costs and poor profitability.
- [21] In 2017, Shahbaz opened a Maaco autobody franchise in Abbotsford, which was moderately successful. He eventually sold Maaco Abbotsford, after acquiring a second Maaco franchise in Langley, which has ultimately become quite successful. As of the date of trial, Shahbaz was continuing to operate Maaco Langley.

The Defendant Sheeraz Anwar

- [22] The defendant Sheeraz Anwar is Nabeela and Shahbaz's nephew. Sheeraz is now 34 years old and single. He was born, raised, and educated in Pakistan. He graduated from university with a bachelor of arts degree in 2012, after which he got a job as a clerk at a law firm in Pakistan.
- [23] Sheeraz first contemplated immigrating to Canada in 2011. He testified that his uncle Shahbaz contacted him and urged him to move to Canada to help run Mucho Burrito Regina. According to Sheeraz, he was reasonably happy in Pakistan, but gave serious consideration to moving to Canada to help his uncle. Sheeraz was led to believe that the business was struggling due to a lack of reliable employees. Shahbaz helped him complete his immigration application and acted as his sponsor. In 2014, Sheeraz was granted admission to Canada under the SINP.
- [24] Sheeraz arrived in Canada in December 2014. He went directly to Regina, where he stayed with Nabeela and her family at Shahbaz's house. Sheeraz testified that he worked at Mucho Burrito Regina from mid-December 2014 to mid-November 2015. There is a dispute between the parties about Sheeraz's hours of work at Mucho Burrito Regina and the manner in which he was paid.
- [25] In November 2015, Sheeraz relocated to the Lower Mainland at the behest of Shahbaz. Sheeraz worked at Mucho Burrito Vancouver from mid-November 2015 until it closed in August 2017. There is a dispute between the parties about Sheeraz's hours of work at Mucho Burrito Vancouver. There is also a dispute about the manner in which Sheeraz was paid, and how much pay he received.
- [26] In 2016, Sheeraz cut back his hours of work at Mucho Burrito Vancouver so that he could attend a program at the Automotive Training Centre ("ATC") in Surrey, which ran weekdays from 6:00 to 9:00 p.m. Sheeraz completed the ATC program in December 2016.
- [27] Meanwhile, in the summer of 2016, Sheeraz and Ali purchased a townhouse in Maple Ridge. It is common ground that the funds for the down payment came from a GIC that had been purchased by Nabeela using the net proceeds from the sale of her Calgary property. Beyond this basic fact, the parties disagree as to the circumstances in which the townhouse was purchased. The scope of the disagreement is set out at paragraphs 10 to 11 above.
- [28] After completing the ATC program, Sheeraz continued to work at Mucho Burrito Vancouver. From March to July 2017, while continuing to work at Mucho Burrito, Sheeraz also worked at a number of other part time jobs, at places like 7-11 and Milestones. From July to August 2017, Sheeraz worked exclusively at Mucho Burrito Vancouver.

- [29] When Mucho Burrito Vancouver closed in August 2017, Sheeraz claims that he started working for his uncle Shahbaz at Maaco in Abbotsford. Shahbaz denies this, maintaining that Sheeraz merely visited the Maaco shop and used the equipment to repair vehicles as part of Sheeraz's own car-flipping business.
- [30] In May 2019, Sheeraz's brother Ali had a falling out with Shahbaz and Nabeela. Sheeraz was in Pakistan at the time, but when he returned, he went to live with his siblings in an apartment in Surrey. From that point forward, Sheeraz and his siblings have had little involvement with Nabeela and Shahbaz. Sheeraz now works as a driver for Uber and Lyft.

The Defendant Ali Anwar

- [31] The defendant Ali Anwar is Sheeraz's younger brother, and Nabeela and Shahbaz's nephew. Ali is now 32 years old and single. Like his older brother Sheeraz, Ali was born, raised, and educated in Pakistan. He graduated from university in 2012 with a degree in business. After university Ali worked as an accountant or bookkeeper for a gas station.
- [32] As with his brother, Ali was convinced to immigrate to Canada by Shahbaz, who said he wanted Ali and Sheeraz to go to Regina to help grow Shahbaz's Mucho Burrito business. Shahbaz helped Ali with his immigration application, which was eventually granted in 2014.
- [33] Ali arrived in Canada in September 2014. He testified that he initially went to Vancouver, where he was trained at Mucho Burrito Vancouver for a period of some three to four weeks, without pay. This is denied by Nabeela and Shahbaz, who claim that Ali did not work at Mucho Burrito Vancouver in 2014.
- [34] Ali relocated from Vancouver to Regina in late October 2014. He claims to have worked full time at Mucho Burrito Regina from October 2014 to April 2016, when the business was sold. There is a dispute between the parties about Ali's hours of work at Mucho Burrito Regina, and the manner in which he was paid.
- [35] Ali moved from Regina to Vancouver in May 2016, the month after Mucho Burrito Regina was sold. Ali then went to work at Mucho Burrito Vancouver. Again, there is a dispute between the parties about Ali's hours of work at Mucho Burrito Vancouver, and the manner in which he was paid. It is common ground that Ali stopped working at Mucho Burrito in August 2017, when the business closed.
- [36] In 2018, Ali got a job as a client advisor at the Royal Bank, where he has worked ever since.
- [37] Ali testified that he had a falling out with his uncle Shahbaz in May 2019, when Ali refused to sign documents in connection with a business loan that Shahbaz was seeking to expand his Maaco business. Thereafter, Ali, Sheeraz, two other siblings (Ayaz and Abida, who had also immigrated from Pakistan at the behest of Shahbaz), and their grandmother Fazal Begum moved out of Shahbaz's home in Surrey and into their own apartment.

Abida Perveen

- [38] Abida Perveen ("Abida") is Ali and Sheeraz's older sister. She was 35 years old at the time of her trial testimony. She testified by video from Pakistan, where she works as a physician.
- [39] Abida was born and raised in Pakistan. From 2007 to 2012, Abida and her older brother Ayaz Anwar attended a medical school in China. They did their studies in English. Both were successful in obtaining their medical degrees. By 2015, Abida was working in Pakistan doing her internship, which was the final step in becoming qualified to practice medicine in Pakistan.
- [40] Abida gave testimony that at some point in 2015, her uncle Shahbaz contacted her and urged her to immigrate to Canada. Shahbaz said he could sponsor her immigration application under the SINP. Shahbaz proposed that Abida could work as a manager at his business, Mucho Burrito Regina, while studying to obtain qualifications to practice medicine in Canada.
- [41] Abida was open to the idea of immigrating to Canada. She said her hope was to work as a manager at Shahbaz's restaurant, while continuing her studies by obtaining a post-graduate degree in gynecology. However, as it turned out, she never ended up going to school in Canada, because she was too busy working at Mucho Burrito.
- [42] Shahbaz helped Abida with her immigration application. Shahbaz's efforts included supplying a false employment letter offering Abida a position as a restaurant manager at Mucho Burrito Regina. Shahbaz admitted in his trial testimony that he supplied the letter, knowing it was false, and intending it to be relied upon by Immigration Canada to grant Abida permanent resident status under the SINP.
- [43] Abida arrived in Canada from Pakistan in September 2015. She went directly to Regina, where she stayed at Shahbaz's house, with Nabeela, Nabeela's children, and her brothers Sheeraz and Ali.
- [44] Abida testified that she worked at Mucho Burrito Regina from September 2015 until early January 2016.
- [45] On 4 January 2016, Abida relocated from Regina to Vancouver. She did so at Shahbaz's direction, on very little notice. He told her she would be going to Vancouver and that her flight was booked for the next day. Shahbaz told her she would be working at Mucho Burrito Vancouver and that he would help her get into the University of British Columbia ("UBC") to continue her studies.
- [46] Abida testified that she worked at Mucho Burrito Vancouver for all of 2016, except for a period of two to three months from September to November 2016 when she stayed at the Maple Ridge townhouse to help care for Nabeela's children while Nabeela recovered from a shoulder injury.

- [47] In January 2017, at Shahbaz's urging, Abida enrolled in a medical aesthetician's program at Langara College. It was a part time program that ran from January to June 2017. Some modules were on Fridays from 10 a.m. to 5 p.m., and others were on Saturdays and Sundays from 10 a.m. to 5 p.m. Abida completed the program in June 2017, but it did not lead to any employment.
- [48] After completing the Langara program in June 2017, Abida went back to Pakistan, where she stayed until October 2017. By the time she returned to Canada, Mucho Burrito Vancouver had been shut down. Abida remained in Canada for several more years, but eventually decided to return to Pakistan for good.
- [49] By the time of her trial testimony in the fall of 2022, Abida was a practicing physician, working at a hospital in Pakistan.

Ayaz Anwar

- [50] Ayaz Anwar ("Ayaz") is the older brother of the defendants Sheeraz and Ali Anwar. Ayaz was born and raised in Pakistan. He was 36 years old at the time of his trial testimony.
- [51] Like his younger sister Abida, Ayaz is a practicing physician in Pakistan. Ayaz testified that he and Abida did their medical studies together in China from 2007 until 2012. Ayaz obtained his bachelor of medicine and surgery degree, after which he practiced medicine for one year in China, before returning to Pakistan.
- [52] By 2014, Ayaz was practicing medicine in Pakistan. He testified that he was relatively content with his life there, but decided to immigrate to Canada largely if not entirely at the behest of his uncle Shahbaz. Shahbaz asked Ayaz to come to Canada to help out with his restaurant business. Shahbaz said the business was not doing well because all of the revenue was going toward wages. Shahbaz also said that Ayaz's brothers Ali and Sheeraz were struggling because they did not speak English well. Shahbaz needed English-speaking workers to make the restaurant run more smoothly and stay profitable. Thus, Ayaz was convinced to immigrate to Canada, principally to support his siblings, Sheeraz and Ali.
- [53] Shahbaz helped Ayaz with his immigration application. Shahbaz's efforts included supplying a false employment letter offering Ayaz a position as a restaurant manager at Mucho Burrito Regina. Shahbaz admitted in his testimony that he supplied the false letter, intending it to be relied upon by Immigration Canada to grant Ayaz permanent resident status under the SINP.
- [54] Ayaz arrived in Canada in August 2016. By this time, Mucho Burrito Regina had already been sold, but Ayaz still went to live in Regina because he was granted permanent residence under the SINP. At the direction of Shahbaz and Nabeela, he stayed in Regina for about one month, to get government identification and a bank card. After that, he relocated to Vancouver.

- [55] While in Saskatchewan, Ayaz visited hospitals in Regina and Saskatoon, but only to see what they were like and not as part of any plan or intention to practice medicine in Canada. He testified that he was "bored" in Saskatchewan because Mucho Burrito Regina had already closed and his siblings had left.
- [56] Ayaz went from Saskatchewan to British Columbia by car, travelling with his uncle Shahbaz. They arrived in the Lower Mainland in early September 2016. Ayaz testified that upon his arrival he stayed for one night at Shahbaz's house in Surrey, before going the next day to meet his siblings at Mucho Burrito, and then going home with them to their residence, a townhouse in Maple Ridge. Thereafter, Ayaz and his siblings Sheeraz, Ali, and Abida stayed at the Maple Ridge townhouse for two days, at which point Nabeela arrived, she and her family moved in, and the Anwars moved back to Shahbaz's house in Surrey.
- [57] Ayaz testified that he worked at Mucho Burrito Vancouver from 7 September 2016 until the business was closed at the end of August 2017. He worked open to close, Monday to Friday, and occasionally on weekends. Ayaz testified that he never got paid for his work at Mucho Burrito Vancouver. His uncle Shahbaz said he could not pay him or issue him pay stubs because according to Immigration Canada records he was supposed to be working at Mucho Burrito Regina, and under immigration rules he had to stay there for two years before he could relocate.
- [58] After Mucho Burrito Vancouver closed in August 2017, Ayaz got a job at a grocery store.
- [59] Ayaz testified about the events that led to the split between the Anwars and their uncle Shahbaz. Some time in May 2019, Shahbaz wanted Ali to sign a document for a business loan. Ali did not want to sign it. Ayaz supported Ali by saying he did not have to sign if he did not want to do so. Shahbaz got very angry and started hitting Ayaz. Shahbaz said if Ali would not sign the loan documents, then the Anwars could not live with him any more. As a result, the Anwars moved out of Shahbaz's house and into their own basement apartment in Surrey.
- [60] Eventually, Ayaz left Canada and returned to Pakistan. He gave his testimony via video from Pakistan, where he was once again practicing medicine. He lives in the family residence with his extended family.

Timeline

- [61] I heard evidence from over 20 witnesses dealing with, among other things, three different businesses, namely Mucho Burrito Regina, Mucho Burrito Vancouver, and Maaco Abbotsford. Given the mass of evidence and the breadth of topics that it covered, I can do no better than to summarize the key events in chronological order as follows. Regrettably, there is some overlap between the details recounted in this timeline and the evidence I have already reviewed in identifying the parties and their personal circumstances.

- [62] Prior to 2009, the plaintiff Nabeela Ishrat and the defendant by counterclaim Shahbaz Khan were both living in Calgary with their respective partners. Nabeela owned a house on Prestwick Boulevard in Calgary.
- [63] In 2009, Shahbaz moved from Calgary to Regina. Once in Regina, he lived in rental accommodations for the first six months before purchasing a house on Nicurity Drive where he then lived with his family. Shahbaz got a job in the financial sector, but his long-term plan was to open his own business and to sponsor the immigration to Canada of one or more of his relatives from Pakistan to work in it.
- [64] On 21 May 2010, Shahbaz incorporated Sunflame Foods Inc., which was the company through which he intended to run his restaurant business. In June 2010, Shahbaz acquired the Mucho Burrito Regina franchise, through Sunflame Foods, for approximately \$100,000.
- [65] In 2011, Shahbaz began communicating with the Anwars regarding their possible immigration to Canada. At the time, Sheeraz and Ali were in Pakistan, and Abida and Ayaz were in China studying medicine.
- [66] In February 2013, Nabeela moved from Calgary to Vancouver with a number of her children. They initially stayed in a hotel and later started renting a house on Jack Bell Drive in Richmond. Nabeela's plan was to start a business in the Vancouver area.
- [67] On 1 October 2013, Nabeela incorporated Noble Foods Inc., which was the company through which she intended to run her restaurant business. In 2014, Nabeela bought a Mucho Burrito franchise restaurant in Vancouver through her company, Noble Foods. She paid \$53,000 for the business. By this point in time, Shahbaz had a number of years of experience running a Mucho Burrito restaurant, so Nabeela and Shahbaz made an arrangement where she would relocate to Regina to run Mucho Burrito Regina, while he relocated to Vancouver to get Mucho Burrito Vancouver up and running.
- [68] In April 2014, Nabeela moved from Vancouver to Regina, and Shahbaz moved from Regina to Vancouver. Nabeela and her four youngest children stayed in Shahbaz's house on Nicurity Drive in Regina. Shahbaz initially stayed at Nabeela's house on Jack Bell Drive in Richmond, but later purchased his own house in Surrey where he lived with his wife and children.
- [69] By 2014, both Sheeraz and Ali had accepted Shahbaz's invitation to immigrate to Canada to work in Shahbaz's business. Shahbaz assisted each of them in filling out their immigration applications under the family category of the SINP. Shahbaz sent materials to Sheeraz and Ali in Pakistan, which they signed and sent back to him in Canada, and then Shahbaz submitted them. Among other things, Shahbaz arranged for both Sheeraz and Ali to get employment letters from a business called Extreme Pita in Regina. The overwhelming weight of the evidence establishes that there was never any intention for Sheeraz or Ali to work at Extreme Pita. I find that, from the outset, Shahbaz's intention was for Sheeraz and Ali to work at Mucho Burrito Regina.

- [70] In September 2014, Ali arrived in Canada from Pakistan. He had been granted permanent resident status under the SINP. Upon his arrival, Ali went to Vancouver where he stayed with Shahbaz and his family for approximately one month. During this time, Ali received training at Mucho Burrito Vancouver.
- [71] In October 2014, Ali went on to Regina, where he stayed with Nabeela and her family at Shahbaz's house on Nicurity Drive. Ali started work at Mucho Burrito Regina more or less right after his arrival in Regina.
- [72] Some time in the fall of 2014, there was a serious fire at Nabeela's house on Prestwick Boulevard in Calgary, causing tens of thousand of dollars in property damage. Nabeela had been renting the house out to tenants at the time. Nabeela's husband Mohammad, who had been going back and forth between Calgary and Regina, oversaw the restoration of the property.
- [73] On or about 13 December 2014, Sheeraz arrived in Canada from Pakistan. Like his brother Ali, Sheeraz had been granted permanent resident status under the SINP. Sheeraz went directly to Regina, where he stayed with his brother Ali, in a single room at Shahbaz's house on Nicurity Drive. Shahbaz started work at Mucho Burrito Regina the day after his arrival in Canada.
- [74] Sheeraz claims that he came to Canada with \$9,000 in cash. He says that upon his arrival, Nabeela took the money. Sheeraz says she promised to repay him but never did. Nabeela denies all of this. This allegation was not put to Nabeela when she first testified, but she was later re-called to address this allegation. She denied knowing anything about the money and denied taking it from Sheeraz.
- [75] On 5 January 2015, Sheeraz opened a bank account at RBC in Regina. Sheeraz testified, and I accept, that Nabeela drove him to the bank to set up the account, and that after he completed the paperwork Nabeela took his bank card and retained it.
- [76] By 2015, Shahbaz had convinced Abida and Ayaz to immigrate to Canada. Both applied for permanent resident status under the SINP. In support of Abida's application, Shahbaz provided a letter from Sunflame Foods dated 10 March 2015, offering employment as a restaurant manager at Mucho Burrito Regina with a starting salary of \$45,000 per year. Similarly, in support of Ayaz's application, Shahbaz provided a letter from Sunflame Foods dated 25 November 2015 offering employment as a restaurant manager at Mucho Burrito Regina earning \$20 per hour. Both of these employment letters were patently false, as Shahbaz never had any intention of employing either Abida or Ayaz as managers at the pay rates described in the letters.

- [77] In September 2015, Abida arrived in Canada from Pakistan. She had been granted permanent resident status under the SINP. Upon arrival, Abida went directly to Regina, where she stayed at Shahbaz's house on Nicurity Drive, in the same room with her two brothers. More or less immediately after her arrival, Abida started working at Mucho Burrito Regina.
- [78] On 6 November 2015, Nabeela sold her house on Prestwick Boulevard in Calgary. After paying off the mortgage, the net sale proceeds were \$168,000.
- [79] On 10 November 2015, at Shahbaz's direction, Sheeraz relocated from Regina to Vancouver. Sheeraz testified that his airplane ticket was purchased for him by Shahbaz. When Sheeraz left Regina, Nabeela gave him his bank card and credit card. When he arrived in Vancouver, Shahbaz took custody of Sheeraz's bank card and credit card. Sheeraz initially stayed at the house on Jack Bell Drive in Richmond that had originally been rented by Nabeela. Sheeraz started work at Mucho Burrito Vancouver more or less right away.
- [80] On 1 December 2015, Nabeela used the bulk of the proceeds from the sale of her Calgary property to purchase a one-year cashable GIC in the amount of \$108,000. This GIC listed Nabeela and her husband Mohammad as owners. It was subsequently cashed in on 17 February 2016, when Nabeela purchased a new cashable GIC in the same amount, in the names of Nabeela, Mohammad, and Shahbaz.
- [81] On 4 January 2016, at Shahbaz's direction, Abida relocated from Regina to Vancouver. Abida testified that Shahbaz purchased her airfare, without consulting her about the move. When Shahbaz discussed the move with Abida, he said he would help her get into a graduate program at UBC, and she could work part time at Mucho Burrito Vancouver. As it turned out, Abida never attended UBC. Upon her arrival, Abida stayed with her brother Ali in a single bedroom at the house on Jack Bell Drive. Abida started working at Mucho Burrito Vancouver shortly thereafter.
- [82] In March 2016, Sheeraz enrolled in an automotive technician's program at ATC in Surrey. Sheeraz testified that he enrolled in the program at the urging of Shahbaz, who was interested in starting up an automotive business of some kind and wanted Sheeraz to run it or work in it. Sheeraz's evidence was that the total cost of the program was around \$15,000, which Shahbaz paid. It was a nine-month program, with classes every weekday evening from 6 to 9 p.m., from March through to December 2016. Sheeraz worked at Mucho Burrito Vancouver in the day times and on weekends, and attended ATC in the evenings.
- [83] On or about 30 April 2016, Shahbaz sold the Mucho Burrito Regina franchise. There is no evidence about the sale price. Around the same time, Shahbaz purchased a townhouse on 162 Street in Surrey. Thereafter, Shahbaz, his wife Freeha, their four children, Shahbaz's mother, and the Anwar siblings all lived in Shahbaz's townhouse in Surrey.

- [84] After Mucho Burrito Regina had been sold in April 2016, Nabeela remained in Regina with her husband and children. They stayed in Regina until early September 2016, when the entire family relocated to Vancouver in time for Nabeela's children to start the new school year.
- [85] Meanwhile, in May 2016, Ali relocated from Regina to Vancouver. Upon arrival, he stayed with his siblings Sheeraz and Abida in a single room in Shahbaz's townhouse in Surrey. More or less immediately after his arrival, Ali started working at Mucho Burrito Vancouver.
- [86] On 20 June 2016, Nabeela cashed out the \$108,000 GIC in the name of herself, her husband, and Shahbaz, and purchased a new cashable GIC in the same amount in the names of herself, Mohammad, Shahbaz, Sheeraz and Ali. The dispute between the parties as to the reason that the Anwar brothers were added to this GIC is a key issue in this litigation. I have summarized the positions of the parties on that issue above, in paragraph 10.
- [87] On 26 July 2016, Sheeraz and Ali received an email from the Royal Bank, copied to Nabeela and Shahbaz, advising that they had been approved for a mortgage of up to \$500,000, Sheeraz responded to the email stating, "thank you so much, you made our day".
- [88] On 2 August 2016, Sheeraz and Ali submitted an offer to purchase a townhouse on 240A Street in Maple Ridge for \$426,000 plus GST. It was a new home purchase, directly from the builder. The offer was accepted. On 11 August 2016, the \$108,000 GIC was cashed and the entire amount deposited into Sheeraz's bank account, for use in the purchase of the Maple Ridge townhouse. The completion date was 22 August 2016, and the possession date was 23 August 2016. The circumstances of the property purchase are contentious. On the one hand, the Anwar brothers claim that they first saw the property, negotiated the terms, and purchased the property, with little or no input from Shahbaz and Nabeela, who was still in Regina at the time. On the other hand, Nabeela and Shahbaz say that Shahbaz was the one who located the property and negotiated the purchase, and Sheeraz and Ali were purchasers in name only, on the understanding that Nabeela would be the beneficial owner of the Maple Ridge townhouse.
- [89] Sheeraz and Ali contend that they moved into the Maple Ridge townhouse on 23 August 2016. Nabeela and Shahbaz dispute this; they say that Sheeraz, Ali, and Abida continued to reside at Shahbaz's residence in Surrey.
- [90] Meanwhile, on 4 August 2016, Ayaz arrived in Canada from Pakistan, having been granted permanent resident status under the SINP. Upon arrival he went to Regina, where he was expected to reside and work under the terms of his immigration arrangement. However, since Mucho Burrito Regina had closed back in April 2016, Ayaz had nowhere to work. He remained in Regina until September 2016, by which point his entire extended family had relocated to Vancouver.

- [91] On 16 August 2016, \$16,000 was transferred out of Sheeraz's account. This \$16,000 represented the net balance in Sheeraz's account, after the initial deposit of \$21,000 and subsequent down payment of a further \$70,000 were withdrawn to complete the purchase of the Maple Ridge townhouse. The withdrawal of the \$16,000 from Sheeraz's account is another point in dispute between the parties. Sheeraz said he had nothing to do with it, and when he realized the funds had been withdrawn, he asked Nabeela, who said the funds had been taken out to pay rent for Mucho Burrito Vancouver and that Shahbaz would pay it back. For her part, Nabeela claimed that Sheeraz himself transferred the \$16,000 back into her account, because it was her money, representing the unused portion of the GIC funds to which Sheeraz and Ali were given access to purchase the townhouse on her behalf.
- [92] On 4 August 2016, Shahbaz incorporated Sunflame Auto Inc. This was the company that he would later use to acquire Maaco Abbotsford.
- [93] Some time in late August or early September 2016, Nabeela's husband Mohammad arrived in Vancouver from Regina with his three youngest children. According to Mohammad, he and the children stayed one night at Shahbaz's residence in Surrey, before moving into the Maple Ridge townhouse the day before the children started school.
- [94] On 4 September 2016, Nabeela arrived in Vancouver from Regina. She came on her own, several days after her husband and children had arrived. After staying one night at her brother's house in Surrey, she and her family moved into the Maple Ridge townhouse. Nabeela claims that the property was vacant at the time. Sheeraz and Ali dispute this; they claim that they lived in the Maple Ridge townhouse from the possession date on 23 August 2016 until some time in early September. At that point, Nabeela arrived, said there was not enough space for her family to live in Shahbaz's house, and asked Sheeraz and Ali to let her stay in the Maple Ridge townhouse with her family for a year.
- [95] Also in early September 2016, Ayaz relocated from Regina to Vancouver. He drove across the country with Shahbaz. They stopped briefly in Calgary. When they got to Vancouver, Ayaz stayed one night at Shahbaz's house in Surrey. The next day he started work at Mucho Burrito Vancouver. Ayaz recalls going to see his siblings in Maple Ridge at the end of the day. He claims to have stayed at the Maple Ridge townhouse for two nights only, before Nabeela arrived and convinced the Anwars to move back to Shahbaz's house in Surrey, because Nabeela and her family needed the Maple Ridge townhouse all to themselves.
- [96] From early September 2016 until early November 2016, Abida stayed with Nabeela and her family at the Maple Ridge townhouse. Nabeela had hurt her shoulder and needed help with the children, so Abida agreed to stay and assist.
- [97] In November 2016, Abida moved back to Shahbaz's residence in Surrey, where she stayed in the same room as her three brothers. Abida worked at Mucho Burrito Vancouver from November through December 2016.

- [98] In January 2017, Abida started a medical aesthetician's program at Langara College, at the behest of Shahbaz. Abida testified that she was not particularly interested in the program, but Shahbaz urged her to take it because he was thinking about opening a beauty parlour or a nail salon. Shahbaz paid the cost of the program, which ran for six months from January until June 2017.
- [99] As of March 2017, Mucho Burrito Vancouver was not doing well. Shahbaz urged Sheeraz, Ali, and Ayaz to take on additional "outside jobs", in addition to working at Mucho Burrito Vancouver, to help cover the business's carrying costs. Sheeraz worked part time at a convenience store and at another restaurant, around the busy times at Mucho Burrito Vancouver. Ali got a part time job at a grocery store, where he too worked around the busy times at Mucho Burrito Vancouver.
- [100] In June 2017, after completing her medical aesthetician's course, Abida took a trip back to Pakistan, where she stayed until October 2017. By the time she had returned, Mucho Burrito Vancouver was closed.
- [101] Some time in the summer of 2017, Nabeela and Shahbaz decided to close Mucho Burrito Vancouver. The lease costs were very high, and the business was not doing well. They struck an agreement with the landlord to cancel the lease with only a small penalty. Mucho Burrito closed on 31 August 2017.
- [102] Meanwhile, Shahbaz was planning to start a new business, Maaco Abbotsford, through his company Sunflame Auto. Starting in around June 2017, Shahbaz obtained the Maaco franchise rights for Abbotsford, secured a lease for shop space, and started renovations on the shop. Shahbaz explained that he financed the new business with the proceeds from the sale of Mucho Burrito Regina, plus a business loan in the amount of \$350,000.
- [103] In July or August 2017, Shahbaz attended a two-week seminar at Maaco headquarters in North Carolina.
- [104] The Anwars claim that while Shahbaz was occupied with his new autobody business, they moved back into the Maple Ridge townhouse, where they stayed with Nabeela and her family, until Shahbaz returned from North Carolina. Nabeela and Shahbaz deny all of this. They maintain that the Anwars lived in Shahbaz's house in Surrey throughout.
- [105] Sheeraz claims that starting in about September 2017, he worked for Shahbaz at Maaco Abbotsford. Sheeraz claims that among other things, he solicited local auto dealers for their collision repair work, manned the front counter at Maaco, and helped with estimates and color-matching. Sheeraz claims that in lieu of paying him wages, Shahbaz continued to cover the mortgage costs for the Maple Ridge townhouse. Shahbaz denies all of this, claiming that Sheeraz simply visited Maaco autobody and sometimes used the tools there to do restoration work on salvaged vehicles that Sheeraz bought and sold as part of his own car-flipping business.

- [106] Between 1 June 2018 and 31 December 2018, a total of \$19,000 was drawn down on Sheeraz and Ali's RBC line of credit ("LOC") associated with the Maple Ridge townhouse. Sheeraz testified that he asked Shahbaz about this, and Shahbaz responded that he needed money to cover expenses and had no choice but to withdraw funds from the LOC. Shahbaz never repaid these funds, with the consequence that Sheeraz and Ali had to add a further \$19,000 to the principal when their mortgage on the Maple Ridge townhouse came up for renewal. When asked about this in cross-examination, Shahbaz responded at one point that he could not say whether or not he took the funds, and at another point he responded that Nabeela never asked him to repay the funds. Presumably this response was based on the position that since Nabeela was the true owner of the house, the line of credit also belonged to her, even though the bank documents clearly reflect that Sheeraz and Ali were the borrowers on the line of credit.
- [107] In November 2018, Sheeraz took a trip to Pakistan. Sheeraz claims it was at this point that he stopped working for Shahbaz at Maaco Abbotsford. As Shahbaz would no longer be making mortgage payments on the Maple Ridge townhouse in lieu of his wages at Maaco, Sheeraz told Nabeela she had to move out of the townhouse so he could start renting it, to which Nabeela responded by asking to stay for one more year. As a means of assuring Sheeraz that the mortgage would continue to be paid in the interim, an arrangement was struck in which Nabeela added Sheeraz and Ali to her bank account, and thereafter the mortgage payments were made directly from this account. Nabeela denies all of this, although it is common ground that starting in November 2018, the mortgage payments for the Maple Ridge townhouse started coming out of a joint account in the names of Nabeela, Sheeraz, and Ali. Sheeraz remained in Pakistan until May 2019.
- [108] On 29 December 2018, while Sheeraz was in Pakistan, an ICBC transfer form was executed, transferring ownership of a Hyundai Elantra from Sheeraz's name into the name of Nabeela's daughter Mana Safdar. Shahbaz admitted that he signed Sheeraz's name as the seller on the transfer document.
- [109] In around May 2019 Shahbaz and Ali got into a disagreement. Shahbaz wanted Ali to sign or co-sign a loan document. Ali refused. Ali, Abida, and Ayaz maintain that Shahbaz got angry and hit Ayaz, who tried to stand up for Ali in refusing to sign the loan document. Shahbaz then said that if Ali would not sign, the Anwars would have to move out of his house. Shahbaz denies all of this, but it is common ground that Ali, Abida, and Ayaz moved out of Shahbaz's Surrey residence for good in May 2019. They rented their own basement apartment in Surrey. Their grandmother Fazal Begum - Shahbaz and Nabeela's mother - initially went with them, although it appears that she was later convinced to resume living with Shahbaz and his family. Sheeraz was still in Pakistan when all of this took place.
- [110] Sheeraz testified that Nabeela and Shahbaz had continued access to his bank accounts and credit cards until May 2019. While he was in Heathrow airport in England, en route from Pakistan to Canada, Sheeraz checked his online banking and saw that either Nabeela or Shahbaz had transferred money out of his account without his consent. Sheeraz testified

that at that point, he changed the password for his online banking, after which Nabeela and Shahbaz had no further access to his accounts. For their part, Nabeela and Shahbaz deny ever making any unauthorized use of Sheeraz's bank account or credit card.

- [111] Upon his return to Canada in May 2019, Sheeraz went to live with his siblings at a rented apartment in Surrey. By this point in time, there was little or no ongoing contact between Nabeela and Shahbaz on the one hand and the Anwars on the other. Despite this, Nabeela and her family continued to live in the Maple Ridge townhouse, and Nabeela continued to make the monthly mortgage payments out of the joint account in the name of Nabeela, Sheeraz and Ali.
- [112] Shahbaz testified that some time in the summer of 2019, he required additional financing to open a second Maaco shop in Langley. To accomplish this, he had to sell his house, and his family moved into a rental property. In the end, Shahbaz was able to secure the necessary financing and he eventually opened a second Maaco shop, in Langley, which is now very successful.
- [113] Another family disagreement took place in late October 2019. It had to do with Shahbaz and Nabeela's mother Fazal Begum, who had been living with the Anwars since about May 2019. On 29 October 2019, in response to a phone call from either Ali or Sheeraz, Shahbaz sent a text message telling the Anwars to "take care of your parents not mine". Shahbaz threatened that any interference with his matters would be met with "very bad" consequences. Shahbaz instructed the Anwars to gather his mother's clothes and medicines so he could pick them up. The evidence reflects that at or around the time of this text message exchange, Fazal Begum left the Anwar apartment and returned to live with Shahbaz and his family.
- [114] Thereafter, there was little or no contact between the parties until the following summer. The evidence reflects that in early June 2020, without any prior consultation with Sheeraz and Ali, Shahbaz contacted the Royal Bank and made efforts for Nabeela to assume the mortgage for the Maple Ridge townhouse. This prompted the bank employee dealing with the mortgage, Rudy Mallet, to contact Ali in an effort to find out who Nabeela was and what relationship she had to the Maple Ridge townhouse. Ali responded that Nabeela was his aunt, that she lived in the townhouse but did not own it, that he was not aware of her efforts to assume the mortgage, and that she had no right to do so.
- [115] At some point shortly thereafter, Shahbaz and Nabeela went to see the Anwars at their apartment in Surrey. Ali, Sheeraz, Ayaz, and Abida were all present at the apartment at the time. Ali had COVID and did not want to talk. Shahbaz did not seem to care. Nabeela wanted Ali and Sheeraz to sign papers transferring title to the Maple Ridge townhouse into her name, so she could get her own mortgage. Ali and Sheeraz refused to do so, taking the position that they were the owners of the property. The discussion became quite heated, but neither side backed down. Shahbaz and Nabeela left, and returned later the same evening with their mother Fazal Begum who was evidently brought into the dispute as a means of plying the Anwars with some form of viva voce suasion. Despite Ms. Begum's involvement,

there was no resolution to the disagreement.

- [116] On 6 July 2020, after seeking legal advice about the situation, Sheeraz applied to the Residential Tenancy Branch ("RTB") for an order of possession, seeking to evict Nabeela and her family from the Maple Ridge townhouse. The RTB proceeding was never resolved because on 14 July 2020, Nabeela filed a notice of civil claim in this Court, seeking a declaration that she is the beneficial owner of the Maple Ridge townhouse. Thereafter, the RTB declined to rule on Sheeraz's application for an order of possession.
- [117] Sheeraz and Ali subsequently filed a response to Nabeela's claim denying that she had any ownership or beneficial interest in the Maple Ridge townhouse. They also filed a counterclaim against both Nabeela and Shahbaz, claiming damages in conversion or unjust enrichment in connection with their alleged failure to receive full remuneration from their work at Mucho Burrito Vancouver, and Sheeraz's work at Maaco.

Analysis

Witness Credibility

- [118] Given the conflicts in the testimony of the four main witnesses -- Nabeela, Shahbaz, Sheeraz and Ali -- witness credibility is a key issue in this case. There were also challenges to the credibility of a number of other witnesses. For example, Nabeela and Shahbaz take issue with the credibility of Abida and Ayaz's testimony. They say that these two witnesses are so closely aligned with their siblings that their evidence cannot be taken as confirmatory of Sheeraz and Ali's testimony. I also heard submissions that Abida's testimony was not credible because, among other things, her answers in cross-examination were convoluted and non-responsive.
- [119] In assessing witness credibility, I am guided by the principles discussed in *Faryna v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) at p. 356-57 and *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186-187, *aff'd* 2012 BCCA 296. The following passage from *Bradshaw* provides a pithy summary of the key principles, along with a list of factors often considered in assessing the evidence of a witness whose credibility is in issue:
- [186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Faryna*

v. Chorny, [1952] 2 D.L.R. 152 (B.C.C.A.) [Farnya]; R. v. S.(R.D.), [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (Farnya at para. 356).

[120] I also find the following passage from *Piga v. Uffelman*, 2022 BCSC 983 to be helpful in considering the credibility of the testimony offered by various witnesses in this case:

[17] To the above principles, I would add that a court may believe some, all, or none of the evidence of a witness, and that credibility determinations "may not be purely intellectual and may involve factors that are difficult to verbalize": *R. v. M.(R.E.)*, 2008 SCC 51 at para. 49. I would also add that it is important not to base credibility determinations on emotional evaluations, stereotypes, guesswork or other lines of impermissible reasoning. Credibility and reliability decisions must be grounded in reason and made as objectively as possible.

[121] I find the principle that the trier of fact may accept some, all, or none of the testimony of a particular witness to be apt in this case. I have serious concerns about the credibility of all four main witnesses, that is, the four parties in this proceeding. Among other things, many of the payroll and tax records of Mucho Burrito Regina, Mucho Burrito Vancouver, and Maaco were admittedly fictitious and bore no relationship to the truth. This was principally the responsibility of Shahbaz, but the other parties were clearly aware of and at the very least acquiesced in the use of false documents for various purposes. More specifically, all four parties admit to submitting or relying upon false records in their dealings with various government agencies and institutions, including Immigration Canada, the Canada Revenue Agency, and banks. This reflects poorly on the credibility of each of them. Also, since the false records relate directly to some of the key factual issues in the case, the Court is hampered in its ability to rely on contemporaneously-created documents as a source of confirmatory evidence.

[122] With these preliminary observations in mind, I do not intend to make global findings with respect to the credibility of each of the witnesses. Rather, I will take the concerns about witness credibility into account in making findings on the key factual points in issue between the parties. In doing so, where there are conflicts in the witness testimony, I must consider the principles discussed above and ultimately decide which witness's account of a contested event or subject is most in harmony "with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances": *Fong v. Lew*, 2015 BCSC 436 at para. 43, *aff'd* 2016 BCCA 67.

Factual Findings

[123] The competing legal claims of the parties cannot be determined without first resolving a number of contentious points of fact, namely: (a) Shahbaz's role in the immigration of the Anwar siblings to Canada; (b) Nabeela and Shahbaz's role in the handling of Sheeraz and Ali's personal affairs and finances; (c) the hours worked by Sheeraz and Ali at Mucho

Burrito Regina, and the manner in which they were remunerated for that work; (d) the circumstances surrounding the purchase of the Maple Ridge townhouse; (e) the hours worked by Sheeraz and Ali at Mucho Burrito Vancouver, and the manner in which they were remunerated for that work; and (f) the question of whether Sheeraz worked at Maaco Abbotsford and, if so, how he was remunerated for that work.

(a) Shahbaz's Role in the Immigration of the Anwar Siblings to Canada

[124] I accept that all four of the Anwar siblings, Sheeraz, Ali, Abida, and Ayaz, were convinced by Shahbaz to immigrate to Canada. Each of the Anwars gave a personal account of what Shahbaz said to them to convince them to come to Canada. Sheeraz and Ali were convinced to immigrate to work for or help Shahbaz in his Mucho Burrito restaurant in Regina, which was held out to be a family business. Abida was convinced to immigrate to Canada to work as a manager in Shahbaz's Mucho Burrito restaurant, while attending university to obtain a post-graduate medical degree. Ayaz was convinced to immigrate to Canada to help his siblings Sheeraz and Ali, and his uncle Shahbaz, in what was held out to be a struggling restaurant business in need of skilled workers.

[125] Each of the Anwars also described a similar experience of how Shahbaz, after convincing them to immigrate, then helped with their immigration applications. Among other things, Shahbaz paid the application fees which were some \$1,500 per applicant. Shahbaz also arranged for or supplied false employment documents submitted with the immigration applications of all four of the Anwar siblings.

[126] Shahbaz testified that Sheeraz and Ali did not have to work at Mucho Burrito, and were free to work anywhere they wished. Shahbaz went on to explain that Sheeraz and Ali did not have to qualify as skilled workers to obtain admission to Canada under the family category; they only needed to demonstrate that they had the means to support themselves. To address this requirement, Shahbaz instructed Sheeraz and Ali to go on a Saskatchewan employment website to find jobs, as a result of which both of them were able to obtain employment letters from Extreme Pita. However, the evidence reflects that Sheeraz's employment letter was in fact emailed by someone at Extreme Pita directly to Shahbaz, who then forwarded it to Sheeraz. This fits with Sheeraz's testimony that Shahbaz provided the Extreme Pita letter for inclusion in his immigration application, with no intention that Sheeraz would work anywhere but Mucho Burrito. The overwhelming weight of evidence satisfies me that it was always Shahbaz's expectation for the Anwars to work at Mucho Burrito. Indeed, it was at Shahbaz's urging that the Anwars immigrated to Canada, and I find that his primary goal in doing so was to secure workers for Mucho Burrito.

[127] With respect to Abida and Ayaz, Shahbaz once again used false immigration letters to support their immigration applications. Shahbaz testified that Abida and Ayaz were both admitted to Canada under the skilled worker stream of SINP. To meet the requirements of the program, Shahbaz prepared employment letters for Abida and Ayaz, falsely describing them as restaurant managers, and overstating their pay rates. Shahbaz freely admitted in

his trial testimony that he created these letters for the purposes of meeting the requirements of the skilled worker stream of the SINP regime, with no intention of employing Abida or Ayaz as set out therein.

(b) Nabeela and Shahbaz's Role in Sheeraz and Ali's Affairs and Finances

[128] I have no difficulty concluding that upon their arrival in Canada, Sheeraz and Ali were heavily reliant upon their aunt and uncle. Sheeraz and Ali did not speak English well. They had no bank accounts, no drivers licenses, no cell phones, and no computer access. Apart from their aunt and uncle, Sheeraz and Ali had no family connections or friends in either Regina or Vancouver.

[129] It does not seem to be in dispute that upon his arrival in Canada, Ali went to Vancouver where he stayed with Shahbaz on Jack Bell Drive in Richmond for three to four weeks. However, Nabeela and Shahbaz both dispute Ali's claim that he worked or was trained at Mucho Burrito Vancouver before relocating to Regina. Of course, Nabeela was not in Vancouver at the time, but I can infer that she would have been aware from her frequent discussions with Shahbaz as to whether Ali received training while in Vancouver. For his part, Shahbaz claimed that after Ali's arrival in Vancouver, Shahbaz took him to Mucho Burrito Vancouver to show him around, but Ali did not work there and no one gave him any training. I reject the testimony of Nabeela and Shahbaz on this point. In general, I find Ali's claim that he received three to four weeks training at Mucho Burrito Vancouver to be more consistent with the notion that Shahbaz (who was in Vancouver) was more experienced and knowledgeable about the Mucho Burrito business than Nabeela (who was in Regina at the time). Perhaps more importantly, the testimony of both Nabeela and Shahbaz that Ali did not receive training at Mucho Burrito Vancouver is contradicted by the evidence of Rupinder Singh, a Mucho Burrito Vancouver employee who gave unchallenged testimony about training Ali for a number of weeks in the fall of 2014.

[130] Ali testified that upon his arrival in Regina in October 2014, he went to work at Mucho Burrito Regina more or less right away. In early December, Nabeela took him to the bank so he could open an account. The account records show that this was on 8 December 2014. While he was at the bank, Ali received a temporary bank card, which Nabeela immediately took from him. Ali never received the permanent card; he believes it was mailed to the Nicurity Drive residence where Nabeela collected and retained it. Ali testified that he did not receive his own bank card until some time in the summer of 2016, and he did not make any transactions on his bank account until 2017, when he started working for "outside" businesses, which I interpret to mean arm's length employment at businesses other than Mucho Burrito.

[131] The thrust of Ali's evidence, which I accept, is that while he was in Regina, he was more or less entirely reliant on Nabeela. He had no drivers license, no cell phone, no computer access, and no access to his own funds. There were times when Ali considered moving out of Shahbaz's house in Regina, but he had no financial means and nowhere to go. Nabeela

told Ali it was not an option for him to live elsewhere, explaining that if he moved out, the family could not save money because they would have to pay his wages right away so that he could pay rent.

- [132] Sheeraz's experience was similar. He testified that upon his arrival in Canada on 13 December 2014, he was given some booklets and pamphlets describing job opportunities and services available to new immigrants. Nabeela took these materials from him, explaining that they were for refugees, and he did not need them because he already had a job at Much Burrito. Sheeraz testified that he started work at Mucho Burrito Regina on 15 December 2014, two days after his arrival.
- [133] Sheeraz also testified that when he got to Canada he had \$9,000 with him, which Nabeela took, explaining that it was not safe to keep that much cash at home. Sheeraz claims that Nabeela never returned this money. Nabeela denied all of this, but I did not find her testimony credible. I find it much more likely that Nabeela felt justified in retaining the \$9,000 because at this point Sheeraz and Ali were both living at Shahbaz's house in Regina without paying room and board, and Nabeela's attitude at the time was that all of the family members were pooling their resources and working together to make the two Mucho Burrito restaurants successful.
- [134] Sheeraz testified that at some point after his arrival in Regina Nabeela took him to the bank and helped him to open an account. The bank records reflect that this was on 5 January 2015. According to Sheeraz, while they were still at the bank Nabeela took his bank card from him. Sheeraz also testified that Nabeela got him to submit a credit card application without him realizing it. I accept Sheeraz's evidence that he did not even know he had a credit card until Nabeela turned over both the bank card and the credit card in November 2015, when he relocated from Regina to Vancouver.
- [135] Sheeraz further testified that upon his arrival in Vancouver, Shahbaz greeted him at the airport and assumed control of his bank card and credit cards. Sheeraz's evidence was that he never had control of his own bank card and had no online access to his bank account until March 2016. Sheeraz claimed to be unaware of the pre-March 2016 transaction history on his account until years later, when he obtained copies of his bank records in preparing for this court case.
- [136] Although both Nabeela and Shahbaz denied controlling Ali and Sheeraz's bank accounts and credit cards and using them for their own purposes, I did not find their testimony on this point credible, for the following reasons:

- a) In chief, Nabeela initially testified that she could not recall ever using Ali's bank or credit cards. She then added that she may have used Ali's credit card "one time", for pre-authorization of her son's orthodontic charges, because Ali "wanted the points". In fact, Ali's RBC Visa records show monthly payments for orthodontic fees, along with purchases for things like jewellery, toys, school fees, children's school books, and glassware. Some of these transactions were made in Regina after Ali had relocated to Vancouver.
- b) Shahbaz also denied ever having possession of Ali's credit card and denied having access to or control over Ali and Sheeraz's bank accounts. When confronted with charges on both Sheeraz and Ali's credit cards that were clearly for Mucho Burrito business expenses (such as food supplies, music services, and even corporate registry fees) Shahbaz maintained that Sheeraz and Ali put these charges on their credit cards themselves and Shahbaz reimbursed them in cash. With regard to the corporate filing fees, Shahbaz says he got Sheeraz to charge the fees to his credit card, reimbursed the payment with cash, and got Sheeraz to write him "an invoice". I consider the suggestion that Sheeraz issued an "invoice" to his uncle to be absurd. Certainly no such invoices were tendered into evidence.
- c) Further, while Shahbaz denied ever have access to or making unauthorized use of Sheeraz's accounts, there are text messages in which Shahbaz admits to having transferred money into and out of Sheeraz's account, although he claimed in the text messages that he was just moving the money around and not taking it.
- d) The defendants have established by way of facts in a notice to admit that while Ali and Sheeraz's bank accounts each received deposits of somewhere between \$12,000 to \$13,000 in 2015 ostensibly as pay for work at Mucho Burrito Regina, comparable amounts of money were transferred out of Ali and Sheeraz's accounts and into the accounts of Sunflame Foods, Nabeela, and Shahbaz. Thus, by one means or another, almost all the money paid to Sheeraz and Ali in 2015 was transferred back to Nabeela and Shahbaz or their companies.
- e) The facts set out in the notice to admit demonstrate that this pattern repeated itself in 2016. Once again, almost all of the money paid into Sheeraz and Ali's bank accounts in 2016 was transferred back to Nabeela, Shahbaz, or their companies.
- f) When confronted with evidence of transfers from Sheeraz and Ali's bank accounts to the accounts of Sunflame Foods, Shahbaz, and Nabeela, Shahbaz claimed that Sheeraz and Ali made the transfers themselves, at Shahbaz's request. Shahbaz claimed that if he needed funds, he would ask Sheeraz and Ali, and they would transfer the funds without hesitation. When asked whether there was an expectation that Sheeraz and Ali would be repaid for such transfers, Shahbaz responded that there was not. Sheeraz and Ali simply transferred funds whenever Shahbaz or Nabeela needed them. Later in cross-examination, when asked whether there was any reason why Sheeraz or Ali would ever transfer funds to Sunflame Foods or Noble Foods in 2016, Shahbaz responded that he could "not recall". I do not find Shahbaz's testimony on this point to be credible in the least.

[137] Taking into account all of the evidence concerning the handling of Sheeraz and Ali's bank and credit card accounts, I reach two conclusions. First, I find that Nabeela immediately assumed control of Ali and Sheeraz's bank and credit cards and Sheeraz and Ali did not have access to them. Second, I find that Sheeraz and Ali had no knowledge of the activity in their accounts until some time in 2016 at the earliest, and even after that Nabeela and Shahbaz continued to access the accounts, often without the knowledge or approval of their nephews.

[138] I also find that neither Sheeraz nor Ali had any means of accessing their bank accounts until March 2016 at the earliest. Sheeraz and Ali both testified that they had no access to a computer while they lived in Regina. Sheeraz testified that he did not have a cell phone until some point after he started attending ATC in March 2016. Ali testified that he did not get a cell phone until 2017. Neither Sheeraz or Ali were challenged on this point, and there is no independent evidence that either of them in fact had cell phones at any earlier point in time.

(c) Hours of Work and Remuneration at Mucho Burrito Regina

[139] It appears to be common ground that three of the Anwar siblings, Ali, Sheeraz, and Abida, worked at Mucho Burrito Regina for various periods of time between 2014 and 2016. More specifically, I find that (i) Ali worked at Mucho Burrito Regina from October 2014 until April 2016; (ii) Sheeraz worked at Mucho Burrito Regina from December 2014 until November 2015; and (iii) Abida worked at Mucho Burrito Regina from September 2015 until January 2016.

[140] There is a dispute between the parties as to the hours that the Anwars worked at Mucho Burrito Regina. Ali and Sheeraz maintain that during their time in Regina, they worked 12 hours per day, seven days per week at Mucho Burrito. Nabeela and Shahbaz deny this. They say that Ali and Sheeraz worked in shifts, during the "lunch rush" and the "dinner rush", but not all day, every day.

[141] There is also a dispute between the parties as to how much the Anwars were paid for their work at Mucho Burrito Regina. Sheeraz and Ali testified that they were given to believe Nabeela and Shahbaz were not in a position to pay them right away, and that they would be paid for their work at Mucho Burrito Regina later, once Nabeela was able to renovate and sell her Calgary property and she and Shahbaz had paid down their debts. Nabeela and Shahbaz dispute this. They claim that Sheeraz and Ali were paid for their work on a bi-weekly basis.

[142] The dispute between the parties cannot be resolved by reference to the payroll records of the businesses, or the financial records of the parties.

[143] With respect to payroll records, neither Nabeela nor Shahbaz kept contemporaneous records of the hours worked by Sheeraz and Ali at Mucho Burrito Regina. Certainly no records of this sort were tendered at trial. Further, the relatively few tax and payroll records

put into evidence -- T4s and pay stubs -- are completely unreliable and bear no relationship to the truth. The pay stubs that were produced did not marry up with the T4s or the amounts actually paid into Sheeraz and Ali's bank accounts, at least on a consistent basis. Of even greater concern, Shahbaz admittedly created false tax and payroll records with respect to all three businesses (Mucho Burrito Regina, Mucho Burrito Vancouver, and Maaco Abbotsford), including false employment letters, T4s that intentionally over-stated the work performed by various employees, and T4s for employees who never worked for the businesses. Shahbaz admitted in chief to creating at least four false documents. By the end of cross-examination, he had admitted to falsifying or causing his accountant to falsify a total of eight documents -- two false employment letters, four false T4s, one forged ICBC transfer form, and one false lease document. Shahbaz created these false documents with the awareness that they would be relied upon by third parties such as the Canada Revenue Agency, Immigration Canada, or the Royal Bank.

- [144] Shahbaz testified that he created the false records, or caused his accountant to create them, in order to assist various individuals with their immigration applications or mortgage approval applications. Whatever the reason, there are so many instances where Shahbaz admittedly created false documents (or caused his accountant to do so) that one cannot have any confidence in the truthfulness or accuracy of the payroll and employment records.
- [145] With respect to the personal financial records of the parties, such as bank statements and other transaction records, I accept that the records themselves are accurate. Sheeraz and Ali's bank statements show bi-weekly deposits of funds consistent with payment of wages from Mucho Burrito Regina over at least some portion of the relevant time. However, the payments bore no relationship to the actual hours worked. Just as importantly, the bank records do not assist in determining who had access to or control over the accounts in issue.
- [146] Sheeraz and Ali both testified that almost immediately after their arrival in Regina, Nabeela took them to the bank where they opened accounts and obtained bank cards, which Nabeela then retained. Sheeraz and Ali further testified that they did not have access to their accounts until some time after they relocated to Vancouver, and even then, Nabeela and Shahbaz still had access to and control over the accounts. In his case, Sheeraz says this continued until some time in late 2018 or early 2019, when he finally changed the password for his online banking.
- [147] Nabeela and Shahbaz deny all of this. However, Sheeraz and Ali's bank account and credit card statements are replete with entries for Nabeela's family-related expenses such as dental bills for her children, and entries for expenses that are clearly related to Shahbaz's businesses, such as food services expenses, restaurant supplies, and even corporate filing fees. Nabeela says these were simply expenses that Sheeraz and Ali paid for and were reimbursed, but there is no evidence of reimbursement, and the frequency and volume of such transactions makes Nabeela's explanation seem all the more unlikely. Shahbaz claims

that Sheeraz and Ali made the transfers themselves, at his request. At points he said there was never any expectation of reimbursement, and at other points he claimed that he did in fact reimburse his nephews. When pressed on details, Shahbaz said he could not recall.

- [148] Based on all of the evidence I have just reviewed, neither the Sunflame Foods payroll records nor the financial records of the parties are of any evidentiary value in determining which parties are telling the truth about Sheeraz and Ali's work hours or manner of pay while at Mucho Burrito Regina. This brings me to the viva voce testimony of the parties and their witnesses.
- [149] Sheeraz and Ali testified that they both worked more or less all the time, 12 hours per day, seven days per week. They claim that while they were in Regina, all they did was work at Mucho Burrito. They had no outside interests or activities. Each day they got up, went to work, worked all day, came home, and went to bed.
- [150] Sheeraz and Ali's testimony is supported by the evidence of their sister Abida, and the evidence of one independent witness, Mr. Banjeta. Mr. Banjeta worked for Mucho Burrito Regina from November 2015 through to some time in 2017 (well after Shahbaz had sold the business to a third party). Mr. Banjeta's impression was that Mucho Burrito Regina was run as a family business and Sheeraz and Ali were like managers or owners. They were present from open to close. His estimate is that Sheeraz and Ali were at Mucho Burrito Regina "90% of the time". Mr. Banjeta was not cross-examined.
- [151] Nabeela and Shahbaz claim that Sheeraz and Ali worked at Mucho Burrito Regina six hours per day, during the "lunch rush" and the "dinner rush". Shahbaz was not present in Regina, so his testimony is not based on first-hand knowledge, but I accept that due to the extent of his involvement in the business, he would have had some sense of how much work his nephews were doing. For her part, Nabeela was present in Regina and was thus in a position to oversee Sheeraz and Ali's work.
- [152] To support their position, Nabeela and Shahbaz led evidence from two independent witnesses, Ms. Pabla and Mr. Sharma.
- [153] Ms. Pabla worked at Mucho Burrito Regina from 2015 to 2017. She recalled working for "Nabeela", whose last name she could not remember. Ms. Pabla testified that she worked about 35 hours per week at Mucho Burrito Regina, in shifts, sometimes the morning shift and sometimes the evening shift. Ms. Pabla's evidence was that Sheeraz and Ali acted like they were managers or owners, not employees. She said they "did their own thing"; sometimes they would work, and sometimes they would "sit and use their phones". She did not recall Sheeraz or Ali working openings. She did recall them working until closing but does not believe they did the closing procedure. She said they would generally only come in during the "busy times". Ms. Pabla testified that Sheeraz and Ali did not work 12-hour shifts, adding that no one did that. It is apparent from Ms. Pabla's testimony that she only worked one shift per day, so she could not say whether Sheeraz and Ali were present for both the morning and evening shifts. Ms. Pabla appeared to have a negative impression or

recollection of Sheeraz and Ali, which I would attribute to resentment based on her perception that they acted like managers and gave her orders. Further, I cannot accept as reliable Ms. Pabla's testimony that Sheeraz and Ali would sometimes "sit and use their phones", because I am convinced on the whole of the evidence that Sheeraz and Ali did not have phones when they worked at Mucho Burrito Regina.

- [154] Mr. Sharma worked at Mucho Burrito Regina from late-2013 until mid-2015. He worked three shifts per week, in the evenings and never in the mornings. Mr. Sharma testified that Sheeraz and Ali would come into the restaurant and work the "busy times" and then leave. His recollection was that Sheeraz would show up for work after Mr. Sharma, at 6:00 p.m. or even as late as 8:00 p.m. Mr. Sharma could not recall when Ali worked. Mr. Sharma's impression was that Sheeraz and Ali acted like employees, not managers. He added that he could not recall a time when Sheeraz and Ali did not come in during one of his shifts. Like Ms. Pabla, Mr. Sharma only worked one shift per day and was therefore not in a position to say whether Sheeraz and Ali worked the entire day, or both shifts.
- [155] Taking all of this evidence together, the overarching context is that Sheeraz and Ali lived an extremely spartan existence while in Regina. They spoke little English, had no friends or acquaintances, no outside interests or pursuits, and no access to their own funds. They were completely dependant upon Nabeela. Against this backdrop I accept the testimony of Sheeraz and Ali that their sole focus while in Regina was to work at Mucho Burrito, and that each of them worked there full time, open to close, seven days per week. I can accept that there may well have been occasions where one or both of them were not present in the restaurant, or left the restaurant with their aunt to pick up supplies. However, I do not accept Nabeela and Shahbaz's position that their nephews worked only six hours per day, during the lunch rush and dinner rush. Above and beyond the serious concerns with respect to the credibility of Nabeela and Shahbaz's viva voce testimony, I find the notion that Sheeraz and Ali would only work six hours per day at Mucho Burrito Regina to be inconsistent with Shahbaz's overall course of conduct in convincing all four of the Anwar siblings to immigrate to Canada. I find that Shahbaz's intent in doing so was to use the Anwars as a work force to run his restaurant businesses. Shahbaz had gone to considerable effort and expense in arranging for Sheeraz and Ali to immigrate to Canada. I find that his purpose in doing so was to make them the backbone of the workforce at Mucho Burrito Regina.
- [156] This leads me to the question of remuneration received by Sheeraz and Ali for their work at Mucho Burrito Regina. Once again, the records are of little evidentiary value, and there is conflicting viva voce evidence.
- [157] Sheeraz and Ali claim that they did not receive any remuneration for their work at Mucho Burrito Regina. They say that what little pay they received was put into bank accounts they did not control, and these funds were ultimately transferred back into the hands of Nabeela and Shahbaz. Sheeraz and Ali claim that this was part of an arrangement in which Nabeela and Shahbaz convinced them to work at Mucho Burrito Regina without receiving any pay

up front, on the understanding that they would be compensated at some point after Nabeela sold her house in Calgary and she and Shahbaz had paid down some or all of their debts.

- [158] Sheeraz claims that this topic was broached a few days after his arrival in Regina. Nabeela asked what his plan in Canada was and Sheeraz responded that his dream was to buy a home. Nabeela contacted Shahbaz in Vancouver and he joined in the conversation via Facetime. Shahbaz explained what a mortgage was and that Sheeraz would have to wait at least a year before he would be in a position to obtain one. Nabeela and Shahbaz told Sheeraz they would not be able to pay Sheeraz his wages right away because they needed funds to restore Nabeela's house and pay off debts, which totalled around \$90,000. Nabeela and Shahbaz said that once Nabeela was able to sell the Calgary property, they would compensate Sheeraz with a lump sum payment. Shahbaz said that he and Nabeela would help Sheeraz achieve his goals, but "right now it is time for you to help us". Sheeraz testified that he agreed to this proposal, explaining that at the time he was willing to help his aunt and uncle.
- [159] Ali gave testimony about an experience that was similar but not identical. Within about a week of his arrival in Regina, Nabeela had a conversation with him in which she asked about his goals. Nabeela contacted Shahbaz and he joined the conversation via Facetime. Nabeela said that if he wanted to buy a house he would have to qualify for a mortgage; in the meantime, the money he earned would be just "sitting in the bank". Nabeela said she needed money to restore her house which had been damaged in a fire. Shahbaz and Nabeela also said that together they had \$90,000 in debt. Nabeela proposed to pay Ali for his work at Mucho Burrito after she had renovated and sold her house. Ali agreed to this arrangement. He felt like Nabeela was his family and she needed his support. Ali testified that none of this was reduced to writing because it was "within the family" and he trusted Nabeela.
- [160] Nabeela and Shahbaz both denied any discussion in which they proposed to withhold Sheeraz and Ali's wages and then compensate them with a lump sum payment later. Nabeela oversaw the work at Mucho Burrito in Regina, and Shahbaz arranged for the pay through the Sunflame Foods bank account. Against this backdrop, Nabeela and Shahbaz claim to have paid their nephews wages on an ongoing basis, by direct deposit into their bank accounts.
- [161] Nabeela's testimony was that all employees at Mucho Burrito were paid bi-weekly, by direct deposit or cheque. She said wages were never paid in cash. She would know this, because she was in Regina and obviously handled the cashflow for the business.

- [162] Shahbaz also testified that Sheeraz and Ali were paid bi-weekly, by direct deposit into their bank accounts. He initially testified that employees were never paid in cash and he had no recollection of ever paying Sheeraz or Ali in cash. Later in his testimony, when confronted on discrepancies between the T4s and bank statements, Shahbaz changed position on this issue, at least in relation to the payment of wages from Mucho Burrito Vancouver.
- [163] As I have already stated, the tax and payroll records relating to Mucho Burrito Regina are completely unreliable and do not assist in resolving the dispute. For the year 2015: (a) Sheeraz's T4 showed employment income of over \$24,000 from Sunflame Foods, while his bank account showed that he only received direct deposits of some \$12,000, and (b) Ali's T4 showed employment income of over \$26,000, while his bank account showed direct deposits of some \$13,000. Shahbaz admitted in his testimony that the T4s were false. He claims that the incomes were over-stated at the request of Sheeraz and Ali, to assist them in future application(s) to sponsor the immigration of their parents to Canada. I do not find this explanation credible. Among other things, I am satisfied that Sheeraz and Ali never had any intention of sponsoring the immigration of their parents to Canada, nor did they have any good reason to falsely suggest such an intention to Shahbaz.
- [164] The bank records do show direct deposits of funds from Sunflame Foods into Sheeraz and Ali's bank accounts. However, the same records show that more or less all of the money transferred into the accounts was transferred back to Sunflame Foods, Shahbaz, or Nabeela. In particular: (a) Sheeraz received \$12,445 in direct deposits from Sunflame Foods in 2015, but over the same period, a total of \$11,598 was transferred out of Sheeraz's account to the accounts of Sunflame Foods, Nabeela, and Shahbaz, and (b) Ali received \$13,838 in direct deposits from Sunflame Foods in 2015, but over the same period a total of \$12,113 was transferred from Ali's account back to Sunflame Foods, Nabeela, and Shahbaz.
- [165] When asked about the transfers out of Sheeraz's accounts, Nabeela was unable to offer any comment, even though some \$1,600 of the transfers went into her own account, and a further \$4,500 went into a joint account controlled by herself and Shahbaz. When asked about the transfers out of Ali's account, Nabeela was again unable to offer any comment, even though a total of \$1,000 was transferred into a joint account controlled by herself and Shahbaz. When asked why almost all of the funds deposited into Ali's account by Sunflame Foods went back into the accounts of Sunflame Foods, Nabeela, and Shahbaz, Nabeela responded that Shahbaz would be in a better position to answer that question.
- [166] For his part, Shahbaz testified that the transfers from Sheeraz and Ali back into the accounts of Sunflame Foods, Nabeela and himself were to cover Sheeraz and Ali's "living expenses". He said that when he needed money, Sheeraz and Ali would transfer funds to him to cover the expenses. In cross-examination, Shahbaz denied making the transfers himself, maintaining that whenever he asked Sheeraz or Ali to transfer funds to him they willingly did so. He said there was no expectation that Sheeraz and Ali would be repaid. When asked what types of expenses Sheeraz and Ali were asked to cover, Shahbaz responded that they were just "general expenses" and he could not recall the specifics.

- [167] Considering the totality of the evidence bearing on this issue, I accept the testimony of Sheeraz and Ali, and I reject the testimony of Nabeela and Shahbaz. At the highest level, I find the account offered by Sheeraz and Ali to be more consistent with the manner in which Shahbaz and Nabeela carried on their business and conducted their affairs, and the manner in which they dealt with family members who helped out or worked in the business.
- [168] Nabeela and Shahbaz both testified that the two of them were working together and effectively treating the two businesses -- Mucho Burrito Regina and Mucho Burrito Vancouver -- as a single, joint venture in which they pooled their resources and divided their efforts.
- [169] Nabeela and Shahbaz both appeared to take the same view of the role to be played by other family members involved in the business. They took the view that all of the family members were pooling their efforts and working together co-operatively toward the overall success of the family businesses.
- [170] Shahbaz testified that in 2017, when Mucho Burrito Vancouver was struggling, many family members worked at the restaurant and were paid nothing. This included Shahbaz's wife Freeha, Nabeela's daughters Maeda and Mana, his nephew Ayaz, and his niece Abida. Shahbaz conceded in cross-examination that Abida and Ayaz were not paid anything for their work at Mucho Burrito Vancouver in 2016 and 2017. He referred to occasions in 2016 when many of the family members would work on "big catering jobs" without pay, because they were "working together as a family". This is consistent with the testimony of Maeda, Ayaz, and Abida.
- [171] Nabeela's evidence was to the same effect. When asked why no T4 was issued to Sheeraz in 2016 for his work at Mucho Burrito, Nabeela's response was, "we all decided to work together as a family and help each other out". When asked what she meant by family, Nabeela responded that she was referring to herself and her children, Shahbaz and his children, and Sheeraz and Ali. (Although she did not mention Abida and Ayaz, I infer that they would also be included in Nabeela's concept of the family.) Nabeela said they all had "one business", and "everybody was helping". In another part of her testimony, when discussing the catering aspect of the business, Nabeela said it was a family undertaking, and that the whole family helped where they could for the success of the business.
- [172] The evidence also demonstrates that this attitude of working together collectively for the success of the business was not a one-way street. It was not merely an expectation of free labour from family members. It also applied to the use of family resources to cover expenses, including living expenses, and even tuition or educational expenses. For example, Shahbaz personally paid the fees for Sheeraz, Ali, Abida, and Ayaz's immigration applications. Sheeraz, Ali, and Abida lived rent free in Shahbaz's house in Regina while working at Mucho Burrito Regina, and at Shahbaz's house in Surrey while they worked at Mucho Burrito Vancouver. Shahbaz and Nabeela also paid for Sheeraz's fees for the ATC program, and Abida's fees for attendance at Langara College. Many of these costs were paid

for directly out of the Sunflame Foods and Noble Foods bank accounts.

- [173] Considered against this backdrop, Sheeraz and Ali's testimony about the manner in which they were to be remunerated for their work at Mucho Burrito Regina has the ring of truth. While the arrangement was highly unusual, it was consistent with how the family conducted itself. Sheeraz and Ali were prepared to contribute to the advancement of the family business, but they were not prepared to do so for free or for no benefit. Sheeraz and Ali were working toward acquiring a house. Shahbaz said it would take some time for them to be in a position to get a mortgage, and in the meantime Sheeraz and Ali acceded to an arrangement where the family would pool its resources, on the expectation that they would be compensated later, when Nabeela had renovated and sold her house in Calgary. Sheeraz and Ali's evidence is also supported by the testimony of their siblings, Abida and Ayaz.
- [174] By contrast, I do not find Nabeela and Shahbaz's position on the manner in which the Anwar brothers were paid for their work at Mucho Burrito Regina credible. Generally, I have serious concerns with respect to the credibility of both Nabeela and Shahbaz's trial testimony. Looking specifically at their evidence on this particular issue, Nabeela and Shahbaz both maintained that the Anwar brothers were more or less regular employees of Mucho Burrito, paid on a bi-weekly basis by direct deposit. That position does not fit with the Sunflame Foods payroll and tax records, such as they are. It is also inconsistent with the control that I find Nabeela and Shahbaz exercised over Sheeraz and Ali's bank accounts. The evidence supports the conclusion that Nabeela and Shahbaz basically used the accounts of their nephews as their own, moving money into and out of the accounts to cover both family and business expenses.
- [175] With regard to the rate of remuneration, I find it more difficult to accept Sheeraz and Ali's viva voce evidence that their pay rate would be \$14 per hour. To be clear, I accept that Nabeela and Shahbaz told them they would not receive their wages right away, and they could expect to receive a "lump sum payment" in the future, but I cannot accept that the agreed upon net rate of pay was \$14 per hour. In cross-examination, Sheeraz and Ali both agreed that the arrangement was never put into writing, and that no one ever kept track of their hours, or kept a running total of their wages. Further, since the wages were never paid, there were never any payroll deductions. Finally, Sheeraz and Ali's retrospective account did not consider the fact that they did not have to pay rent or any other living expenses during the time period in issue. Indeed, on their own evidence they did not have access to any money. Although the funds may well have come out of Sheeraz and Ali's own accounts, which they did not control at the time, Nabeela and Shahbaz did cover all of Sheeraz and Ali's expenses. In any event, to the extent that there was any discussion of a specific wage or pay rate that Sheeraz and Ali were to receive, I find that this figure was put forward as gross pay, on the understanding that Sheeraz and Ali would in the future receive a "lump sum payment" of some net amount.

(d) Circumstances Surrounding the Purchase of the Maple Ridge Townhouse

[176] I would summarize the basic facts surrounding the purchase of the Maple Ridge townhouse as follows:

- a) On 6 November 2015, Nabeela sold her house in Calgary for \$465,000. After paying off the mortgage, the net proceeds were \$168,000.
- b) On 1 December 2015, Nabeela used the bulk of the net proceeds from the sale of her Calgary home to purchase a one-year cashable GIC with an account number ending in the digits 0514. The amount of the GIC was \$108,000. The investment holders on this GIC were Nabeela and her husband Mohammad.
- c) On 17 February 2016, Nabeela exchanged the first GIC for a second GIC with an account number ending 1064. The investment holders on this GIC were Nabeela, Mohammad, and Shahbaz.
- d) On 20 June 2016, Nabeela exchanged the second GIC for a third GIC with an account number ending 3009. The investment holders on this GIC were Nabeela, Mohammad, Shahbaz, Sheeraz, and Ali.
- e) At some point prior to 26 July 2016, Shahbaz submitted an application with the Royal Bank, on behalf of Sheeraz and Ali, seeking approval for a mortgage. As part of the mortgage approval process, Shahbaz created a false rental agreement for his house on Nicurity Drive in Regina, listing his wife Freeha as the landlord and Sheeraz and Ali as tenants renting the property for \$1,600 per month, commencing on 1 February 2015. At trial, Shahbaz admitted that he created this document in 2016, back-dated it to 2015, got his wife and nephews to sign it, and arranged for it to be included in Sheeraz and Ali's mortgage application.
- f) On 26 July 2016, Shahbaz received an email from RBC, copied to Sheeraz, Ali, and Nabeela, stating that Sheeraz and Ali had been approved for a mortgage of up to \$500,000. The only response was from Sheeraz, who replied, "thank you so much, you made our day".
- g) On 2 August 2016, Sheeraz and Ali submitted an offer to purchase a townhouse unit on 240A Street in Maple Ridge for \$426,000 plus GST. It was a new home purchase, directly from the builder. The offer was accepted. The completion date for the sale was 22 August 2016, and the possession date was 23 August 2016.
- h) On 11 August 2016, the third \$108,000 GIC was cashed and the entire amount was deposited into Sheeraz's bank account, for use in the purchase of the Maple Ridge townhouse. On the same date, Sheeraz and Ali obtained a draft for the \$21,000 deposit on the purchase and delivered it to Ms. Fong-Leung, the notary who handled the sale.
- i) At some point prior to 22 August 2016, Sheeraz and Ali obtained a bank draft in the amount of \$70,028, representing the balance of the purchase price, and delivered it to Ms. Fong-Leung.

- j) The sale completed on 22 August 2016, and a certificate of title was subsequently issued listing Sheeraz and Ali as the property owners.
- k) There is conflicting evidence about who first occupied the townhouse and when they took possession. Sheeraz and Ali claim that they moved into the property on 23 August 2016, and were later convinced to move out by Nabeela, who arrived in early September 2016 and said she needed to live in the townhouse with her family. Nabeela and Shahbaz deny this. They claim that Sheeraz and Ali never lived in the townhouse, and that Nabeela and her family moved in in early September 2016 and have lived there ever since.

[177] With these basic facts in mind, I turn to the conflicting positions of the parties concerning the purchase of the Maple Ridge townhouse.

[178] On the one hand, Nabeela and Shahbaz testified that their nephews were added to the GIC to give effect to a plan proposed by Sheeraz and Ali in which they would purchase a house and hold it in trust for Nabeela. The arrangement was supposed to be mutually beneficial to Nabeela and to the Anwars. It would benefit Nabeela because she was not in a position to qualify for a mortgage at the time, while Sheeraz and Ali were able to do so. It would benefit Sheeraz and Ali because property ownership would strengthen their application to sponsor the immigration of their parents to Canada. Nabeela and Shahbaz say that these were the circumstances in which Sheeraz and Ali's names were added to the GIC to facilitate the purchase of the townhouse, on the understanding that they would hold it in trust for Nabeela. In the end, Sheeraz and Ali only required \$91,000 for the down payment, so the balance of the GIC funds were transferred back to Nabeela. After the townhouse was acquired, Nabeela and her family lived in it, and Nabeela and Shahbaz transferred funds to Sheeraz each month to pay the mortgage. Later, after one of Nabeela's cheques bounced and a mortgage payment was late, they made an arrangement in which Nabeela made the mortgage payments directly out of a joint account shared by herself, Sheeraz, and Ali. This arrangement continued until Nabeela, feeling that she was finally in a position to obtain her own mortgage, tried to have the mortgage "transferred" into her name. She was unable to do so until title to the property was transferred into her name. She and Shahbaz then went to Sheeraz and Ali's apartment to ask them to transfer the title, but the Anwars refused, claiming for the first time that the townhouse was their property. Finally, after Sheeraz and Ali tried to evict Nabeela under the Residential Tenancy Act, Nabeela filed the current court action seeking a declaration that she is the true owner of the Maple Ridge townhouse.

[179] On the other hand, Sheeraz and Ali both testified that they were added to the GIC as compensation for their previously unpaid work at Mucho Burrito Regina. They claim that adding their names to the GIC was the culmination of the deferred-payment arrangement that Nabeela and Shahbaz struck with each of them, in separate but similar conversations shortly after their arrival in Regina. Sheeraz and Ali both claim to have accepted a proposal to work at Mucho Burrito Regina without receiving any pay up front, on the understanding that they would be compensated for their efforts later, once Nabeela had sold her house in Calgary and Nabeela and Shahbaz had paid off their debts. After Mucho Burrito Regina was

sold, Nabeela and Shahbaz wanted Sheeraz and Ali to continue working at Mucho Burrito Vancouver under the same arrangement. To convince the Anwars to do so, Nabeela put their names on the GIC as compensation for their work at Mucho Burrito Regina. Sheeraz testified that Shahbaz showed him a breakdown of the calculations on his phone, setting out the amounts Sheeraz and Ali had earned, less the costs of their room and board, and that it came out to roughly the amount in the GIC, \$108,000. After their names were added to the GIC, Sheeraz and Ali claim that they used the funds to purchase the Maple Ridge townhouse as their own home. Some \$16,000 was left after the purchase of the property, which Shahbaz transferred out of Sheeraz's account without Sheeraz's consent or agreement. On the occupancy date, Sheeraz and Ali moved into the Maple Ridge townhouse. Shortly thereafter, Nabeela showed up and convinced her nephews to let her live there with her family. Sheeraz and Ali testified that over time they tried to get Nabeela to move out, but she put them off. Sheeraz raised the topic of Nabeela moving out just prior to his departure for Pakistan in November 2018. Sheeraz claims that Nabeela convinced him to let her stay for one more year, and they worked out an arrangement whereby she would make the mortgage payments by way of a joint bank account in the names of Sheeraz, Ali, and Nabeela. This arrangement continued until Nabeela tried to assume the mortgage, and then approached Sheeraz and Ali to sign over the title to the property to them, at which point the whole arrangement fell apart and the litigation commenced.

[180] I do not find Nabeela's evidence about the circumstances leading up to the purchase of the Maple Ridge property to be credible. In addition to my broader concerns about Nabeela's credibility, I find that her evidence about the purchase of the Maple Ridge testimony was not credible for the following reasons.

[181] First, Nabeela's evidence concerning the purchase of the Maple Ridge townhouse was internally inconsistent. In chief, Nabeela testified that when she sold her house in Calgary, her intent was to use the net proceeds to purchase a house in British Columbia, and then the Anwars approached her with a plan to purchase a property in their name. However, in cross-examination, Nabeela testified that before Ali and Sheeraz approached her with their "plan", she was not intending to purchase a house in British Columbia. Moreover, while Nabeela claimed in her testimony in chief that Ali and Sheeraz approached her with their "plan", Nabeela's notice of civil claim (confirmed in cross-examination) alleges that because she was not able to afford her own mortgage, she sought out the assistance of the Anwars to purchase a house and hold it in trust for her.

[182] Second, Nabeela's evidence concerning the purchase of the Maple Ridge townhouse was also inconsistent with her husband's testimony on this topic. Nabeela claimed that when Ali and Sheeraz initially approached her with their "plan" to purchase a property and hold it in trust for her, she told them that she would have to discuss it with her husband, that she did in fact discuss it with him, and that he agreed. However, this account was contradicted by her husband Mohammad, who testified that Nabeela did not tell him about the arrangement until after the Maple Ridge townhouse had been purchased and his family had

moved into it.

- [183] Third, a key premise of Nabeela's position is, in my view, highly dubious. In particular, Nabeela claimed that Sheeraz and Ali proposed to purchase and hold the Maple Ridge townhouse in trust for her to strengthen their position for future application(s) to sponsor the immigration of their parents. However, all four of the Anwar siblings who gave evidence in this case testified, and I accept, that their parents live a relatively comfortable life in Pakistan and have never had any interest in immigrating to Canada, for a variety of reasons that I do not need to recount. Given these uncontroverted facts, the idea that Sheeraz and Ali would want to purchase and hold a property in their name simply to strengthen their position as immigration sponsors for their parents is so implausible as to be absurd. Now, this leaves open the possibility that Sheeraz and Ali, while having no intention of ever sponsoring the immigration of their parents, nevertheless presented this scenario to Nabeela to trick her into giving them the money to buy a house. But I reject that possibility for several reasons. For one thing, this would mean that as far back as June 2016, Sheeraz and Ali hatched a plan to swindle their aunt Nabeela, and thus made up the story about wanting to sponsor the immigration of their parents to Canada. Just as importantly, I infer that Nabeela and Shahbaz, being familiar with the Anwar family, would have known that the Anwar parents were settled in Pakistan and would never have been interested in immigrating to Canada. In other words, the proposed cover story would never have been plausible to Nabeela or Shahbaz.
- [184] Fourth, Nabeela's testimony in chief presented a misleading picture of the extent to which she and her brother Shahbaz were involved in the actual purchase of the Maple Ridge property. While Nabeela testified that Shahbaz made the offer to purchase the townhouse, in fact the offer to purchase was made by Sheeraz and Ali. Similarly, Nabeela suggested in her testimony in chief that she made the initial deposit of \$21,000, and the final installment of \$70,028 on the purchase price, but the evidence of the notary public Ms. Fong Leung establishes that Sheeraz and Ali were her clients, and she only ever dealt with them in the purchase of the property.
- [185] I find Nabeela and Shahbaz's repeated use of the term "trust" in their testimony to be contrived and intended to support the legal argument advanced by their counsel. I find that there was never any discussion in which Ali and Sheeraz led Nabeela to believe, either expressly or by implication, that they would purchase the Maple Ridge townhouse in their name and hold it "in trust" for her.
- [186] I find that the purchase of the second GIC, in the names of Nabeela, Mohammad, and Shahbaz, to be consistent with the overall theme that Nabeela and her brother Shahbaz were pooling their efforts and financial resources as part of a joint family business. Nabeela and Shahbaz had been working closely together, running each other's businesses and intermingling their finances since 2014. After purchasing Mucho Burrito Vancouver, Nabeela turned the business over to Shahbaz to run, while she went to Regina, lived in Shahbaz's house, and ran Mucho Burrito Regina on his behalf. Shahbaz handled the

finances for both businesses. The evidence reflects that while the two businesses were separately owned -- with Mucho Burrito Vancouver being owned by Nabeela's company Noble Foods, and Mucho Burrito Regina being owned by Shahbaz's company Sunflame Foods -- the finances were intermingled. Expenses for one company, including wages, were often paid for by the other. All of this reflects that as far back as 2014, Nabeela and Shahbaz were pooling their efforts and intermingling their finances. Further, I accept the testimony of both Sheeraz and Ali that, in separate conversations with each of them, Nabeela and Shahbaz asked them to work for Mucho Burrito Regina without receiving any pay, on the understanding that they would be compensated once Nabeela restored and sold her house in Calgary and Nabeela and Shahbaz paid off their debts. By the summer of 2016, Nabeela had sold her house in Calgary, and Shahbaz had sold Mucho Burrito Regina. It was against this backdrop that Nabeela added Shahbaz's name to the GIC, effectively making him a joint owner of the funds along with Mohammad, who also had an interest in the Calgary property as Nabeela's husband. I find that Nabeela added Shahbaz's name to the GIC in recognition that the two of them were pooling financial resources in association with what was in effect a joint family enterprise.

[187] I have considered Shahbaz's evidence that his name was added to the GIC due to a banking error. I note that while Shahbaz was first listed as an owner on the second GIC, for some reason he complained to the bank about being listed as an owner on the third GIC. In any event, Shahbaz testified that his name was added to the third GIC due to a banking error of which he was unaware until his examination for discovery in this litigation. Thereafter, he made a complaint to the bank, and ultimately obtained a letter dated 5 October 2022 in which the bank accepted the position that Shahbaz's name was added to the GIC in error. The letter was tendered in evidence without objection, presumably on the basis that it was an authentic bank document. The letter states that Shahbaz's complaint was resolved based on information provided by Shahbaz himself on 23 September 2022, and that the financial planner who initially opened the GIC back in 2016 had no independent recollection of the transaction details. Thus, the letter goes no further than to show that some six years after the fact, while this litigation was ongoing, Shahbaz was able to get his name removed from the GIC. Of course, at that point the record of the GIC had no practical significance to the bank, since the GIC had been redeemed on 11 August 2016. I do not find this evidence helpful at all in considering why Shahbaz's name was added to the GIC in the first place.

[188] I further find that Sheeraz and Ali's names were added to the third GIC in recognition of their previously unpaid work at Mucho Burrito Regina. I reach this finding in light of the overall situation of the extended family in the summer of 2016, and the dynamics within the family. By this point Nabeela had restored her Calgary property and sold it for net proceeds of some \$168,000, and Shahbaz had sold Mucho Burrito Regina for an undisclosed amount of money. Meanwhile, Sheeraz and Ali had worked at Mucho Burrito Regina for some 18 months -- each with no pay in their pockets and no real control over their own financial positions -- and both nephews were continuing to work at Mucho Burrito Vancouver in more or less the same fashion. I find that, as a means of recognizing their

efforts in working toward the success of the family businesses, and as a means of encouraging them to continue on in the same fashion, Nabeela added Sheeraz and Ali's names to the third GIC. At this point, Nabeela, Shahbaz, Sheeraz, and Ali were effectively joint owners of the \$108,000 in the GIC.

- [189] I further find that the Maple Ridge townhouse was effectively purchased as a continuation of the family's joint efforts to pool their resources associated with the family businesses. Although Sheeraz and Ali were the purchasers, the evidence reflects that Shahbaz was heavily involved in securing the mortgage approval on their behalf, shortly after Nabeela added Sheeraz and Ali's names to the GIC. Thereafter, all of the family members started looking for a property to purchase, leading ultimately to Sheeraz and Ali's purchase of the Maple Ridge townhouse.
- [190] After considering the testimony of all the family members, including Nabeela, Mohammad, Maeda, Sheeraz, Ali, Abida, and Ayaz, I conclude that Sheeraz and Ali moved into the townhouse at or shortly after the occupancy date of 23 August 2016, and that they effectively lived there until early September 2016, when Nabeela arrived from Regina. Plaintiff's counsel cited Sheeraz's phone records, which reflect that between 24 August 2016 and 3 September 2016, Sheeraz made multiple cell phone calls from White Rock and Whalley, and no calls from Maple Ridge. I have considered that evidence but I do not find it determinative of this issue. I accept Sheeraz's evidence that at the relevant time, he had many reasons be in Surrey, including attendance at ATC in Whalley and visiting family members at Shahbaz's house in White Rock, and that Sheeraz had little or no reason to make any calls from Maple Ridge. Further, while plaintiff's counsel questioned whether it would make any sense for Sheeraz and Ali to move into the Maple Ridge townhouse with only mattresses and clothing, and no other furniture or household goods, I do not find this to be surprising or out of character given the manner in which Sheeraz and Ali had been living since their arrival in Canada in 2014. They had few if any belongings and lived an extremely sparse lifestyle. There were times when all four of the Anwar siblings stayed in a single bedroom in their uncle's house. In this context I do not find it surprising that the only items Sheeraz and Ali moved into the Maple Ridge townhouse when they took possession were some mattresses and clothing. Further, I accept Ali's testimony that he and Sheeraz planned to use the remainder of the GIC funds to buy furniture and household goods, but this plan never came to fruition because Nabeela ended up moving into the townhouse, and Nabeela or Shahbaz transferred the balance of the GIC funds out of their bank account.
- [191] I find that after Nabeela arrived from Regina, she went to the Maple Ridge townhouse and convinced Sheeraz and Ali to let her live there with her family. I reject the notion that Nabeela took possession of the townhouse because it was always meant to be her property. Rather, I find that she convinced Sheeraz and Ali to let her stay there with her family, on the implied understanding that Sheeraz and Ali continued to have an ownership interest in the property. I further find that from time to time thereafter, Sheeraz and Ali stayed at the

Maple Ridge townhouse, on weekends, and for an extended time in the summer of 2017 when Shahbaz was preoccupied with setting up his first Maaco franchise in Abbotsford.

[192] I find that Nabeela paid most of the carrying costs for the Maple Ridge townhouse, including the mortgage payments, because she was living there with her family. Despite this, Sheeraz and Ali retained an interest in the property. The situation continued in this way until the summer of 2020, when Shahbaz and Nabeela tried to arrange for Nabeela to assume the mortgage for the Maple Ridge townhouse. This led to the confrontation at the Anwar apartment, when Sheeraz and Ali refused Shahbaz and Nabeela's demand to sign over the title to the property.

(e) Hours of Work and Remuneration at Mucho Burrito Vancouver

[193] Nabeela testified in chief that Sheeraz and Ali worked at Mucho Burrito in 2016 and 2017, but denied that they worked full time for anything more than a "few months", "during the rush". With respect to remuneration, Nabeela claimed that Sheeraz and Ali were always paid for their work at Mucho Burrito, sometimes by cheque and sometimes by cash. I find these assertions to be inaccurate and untruthful, having regard to other aspects of Nabeela's own testimony. In particular:

- (a) Nabeela testified that Mucho Burrito Vancouver was open 12 hours per day, seven days per week, although she could not recall the exact operating hours of the business.
- (b) When asked about Sheeraz and Ali's hours of work at Mucho Burrito Vancouver, Nabeela said their pay stubs were based on 20 hours of work per week. She added that they worked "mostly in the evening rush", and sometimes in the evenings, adding that it was "all mixed up".
- (c) While Sheeraz and Ali's pay stubs were exactly the same, at one point in her evidence Nabeela conceded that they might have worked different hours.
- (d) Nabeela agreed that in 2016, Noble Foods did not issue T4s to Sheeraz and Ali. She conceded that Noble transferred \$7,400 to Sheeraz's account in 2016, which was not for employment, but rather to "cover expenses", including the mortgage for the Maple Ridge property, because they "all decided to work as a family to help each other out".
- (e) When it was put to Nabeela that Ali did not work anywhere but Mucho Burrito in 2016, she responded, "it was not work", but rather "a family undertaking". She referred to catering jobs in respect of which other family members, including Abida and Ayaz, would work or "help out", without receiving any pay.

- (f) Nabeela was referred to a record of employment for Sheeraz stating that his first day of work was 1 April 2017 and his last day was 14 September 2017. When it was put to her that this could not be accurate, Nabeela testified that Shiraz and Ali worked "on contract" in 2016, and were "hired" again as employees in 2017, even though the nature of their work never changed. The idea that Sheeraz and Ali were contract workers in 2016 and then switched to employees in 2017 is both fictitious and absurd.
- (g) Nabeela testified that by 2017, Mucho Burrito Vancouver was not making enough money to cover its costs, in terms of employee wages, rent, and franchise fees. This supports an inference that Sheeraz and Ali were not being paid because there were insufficient funds available to pay them.
- (h) Nabeela testified that Sheeraz and Ali were always paid for their work, but in other parts of her testimony she said that sometimes they would "help out", in the same way that her daughter Maeda or other family members would.
- [194] In his testimony, Shahbaz denied that Sheeraz and Ali worked full-time, seven days per week at Mucho Burrito Vancouver, and he maintained that they were always paid for their work. Once again, I do not find these assertions to be credible or reliable having regard to the evidence as a whole, including the following aspects of Shahbaz's own testimony:
- (a) With regard to Mucho Burrito Regina, Shahbaz claimed that Sheeraz and Ali were paid bi-weekly, by direct deposit. However, Shahbaz went on to testify that Sheeraz and Ali did not always receive their bi-weekly deposits, because "there were living expenses", and if Shahbaz needed money he would deduct it from their wages.
- (b) When asked how much Sheeraz and Ali were paid for their work at Mucho Burrito Regina, Shahbaz said it worked out to about \$14 per hour, which one could figure out from the pay stubs. However, on the whole of Shahbaz's evidence it is clear that Sheeraz and Ali's pay stubs were completely inaccurate with respect to the hours they worked or the pay they received.
- (c) Shahbaz initially testified that at both Mucho Burrito Regina and Mucho Burrito Vancouver, Sheeraz and Ali were paid by direct deposit. Shahbaz could not recall any instances when they were paid in cash. But when confronted with the fact that the payroll records did not match up with the amounts deposited into Sheeraz and Ali's accounts, Shahbaz changed his evidence. With regard to Sheeraz's pay, he stated, "now that I see that, yes, Sheeraz was paid in cash", or words to that effect. When confronted with the fact that Ali's T4 for 2017 showed \$5,060 but there were no funds deposited into his account, Shahbaz claimed to recall that all of Ali's wages were paid in cash. Thus, the position Shahbaz had taken by the end of his cross-examination was miles apart from his initial position that Sheeraz and Ali were paid by direct deposit and he could not recall any instances when they were paid in cash.

- (d) When asked if Sheeraz and Ali worked the exact same hours in 2017, Shahbaz responded that they did, even though the evidence reflects that by 2017, they were each working separate "outside jobs" to earn additional income to keep Mucho Burrito Vancouver afloat.
- (e) Shahbaz admitted that in 2016 and 2017, other family members, including Abida and Ayaz, worked for Mucho Burrito without receiving any pay. Shahbaz explained that they were "working together as a family". When asked if his wife Freeha worked at Mucho Burrito in 2016, Shahbaz responded, "well, everybody worked there in 2016, so she must have; yes".
- (f) Like Nabeela, Shahbaz took the position that Sheeraz and Ali did not receive T4s in 2016 because they were working "on contract". Then in 2017 Sheeraz and Ali once again received T4s, although the nature of their work never changed.
- (g) Shahbaz agreed that he intermingled business expenses and personal expenses for various family members, all of which were paid out of the Noble Foods account. This included mortgage payments for the Maple Ridge townhouse, and payment of Sheeraz's ATC tuition fees. When asked about the ATC fees, Shahbaz agreed that they were paid out of the Noble Foods account, explaining that this was "the only source we had".
- (h) Shahbaz agreed that in 2017 Mucho Burrito did not have any non-arm's length, non-family employees. The only employees were family members. Shahbaz also testified that Mucho Burrito Vancouver was not making enough money to cover its expenses. This supports an inference that there were insufficient funds to pay the employees.

[195] For their part, Sheeraz and Ali testified that they worked at Mucho Burrito Vancouver on more or less the same terms that they had previously worked at Mucho Burrito Regina. In particular, each of them testified that they agreed to work at Mucho Burrito Vancouver without receiving any pay up front, on the understanding that they would be compensated later. Sheeraz and Ali both claimed to have worked full time, seven days per week, except for certain periods of time when they were engaged in "outside work" (taken at Shahbaz's direction, to help cover Mucho Burrito's operating deficit), and, in Sheeraz's case, automotive technician training.

[196] Sheeraz testified that he started working at Mucho Burrito Vancouver in November 2015. He worked full time, 12 hours per day, six to seven days per week, until March 2016, when (at Shahbaz's request) he enrolled in an auto technician's program at ATC in Surrey. During the nine months that Sheeraz attended ATC, his work at Mucho Burrito was cut back so he could attend school. On weekdays, he worked at Mucho Burrito during the day, and attended ATC from 5 or 6 p.m. to 9 or 10 p.m. On weekends, Sheeraz continued to work full hours at Mucho Burrito. After completing the auto technician's program in November 2016, Sheeraz returned to full time work at Mucho Burrito. This continued until the spring of 2017, at which point Sheeraz was working most of the time at Mucho Burrito, while also squeezing in shifts of "outside work" (at Shahbaz's direction) at a convenience store, another restaurant, and as a security guard, to assist in covering Mucho Burrito's operating costs. Sheeraz stopped working at Mucho Burrito Vancouver when the business closed down at

the end of August 2017.

- [197] Ali's testimony was that he started at Mucho Burrito Vancouver in May 2016, working 12 hours per day, six to seven days per week. Ali continued with this schedule until about June 2017, when he started work each morning at Mucho Burrito, then worked an afternoon shift at a produce store, and then returned to Mucho Burrito to assist with the closing each night. Based on the testimony of Sheeraz, Ali, and Ayaz, I find that Ali's "outside" work at the produce store was undertaken at Shahbaz's direction, at a point when Mucho Burrito was operating at a deficit and Shahbaz needed other sources of revenue to cover the family's business and personal expenses. Ali continued to work at Mucho Burrito Vancouver until it closed at the end of August 2017.
- [198] I accept Sheeraz and Ali's testimony concerning the periods of time that they worked at Mucho Burrito, and their hours of work. Their testimony was internally consistent and not shaken in cross-examination. I have considered the differences between Sheeraz's trial testimony and his evidence at examination for discovery, but I do not find those differences to be substantive or material. For example, while at one point in discovery Sheeraz said he worked from 10:00 a.m. to 9:00 p.m. or 9:30 p.m., for the "whole time", with no exceptions, I accept Sheeraz's explanation that when he gave this answer he was referring to the initial period, before he started attending ATC. Further, when Sheeraz stated that the work hours were from 10:00 a.m. to 9:00 p.m., I consider that he was referring here to the restaurant's business hours, and any discrepancy with his trial testimony is referable to a lack of precision or lack of clarity in language; none of this leads me to conclude that Sheeraz's trial testimony was untruthful.
- [199] Sheeraz and Ali's evidence about their hours of work at Mucho Burrito Vancouver was also supported by the testimony of their siblings Abida and Ayaz. Although Abida and Ayaz were clearly not independent witnesses, their evidence was consistent with but not identical to Sheeraz and Ali's testimony, and they were not shaken in cross-examination. I do accept that Abida's evidence was disjointed and confusing, and I would not place as much weight in it as I would in the testimony of the other three Anwar siblings. Even accounting for this, I find that the testimony of the four Anwar siblings came across as four separate accounts of a very similar experience, each told from a distinct perspective. As a whole, their evidence had the ring of truth.
- [200] Sheeraz and Ali's testimony about their work at Mucho Burrito Vancouver was also corroborated to some extent by the testimony of the property manager, Amarjit Toor. He worked at the building on weekdays from early in the morning (between 7 a.m. to 9 a.m.) until 5 p.m. Mr. Toor testified that he saw Sheeraz and Ali working at Mucho Burrito "almost every day". He also saw Sheeraz and Ali at the building later in the evening on occasions when he attended after hours for building maintenance issues, although he conceded in cross-examination that this only happened once or twice per month. Mr. Toor also knew Shahbaz, whom he believed to be the owner of Mucho Burrito, and whom he saw working there quite frequently. Mr. Toor testified that about a year before the trial in this

matter, Shahbaz approached him and tried to get him not to be a witness in the case. I find that Mr. Toor's evidence supports the position of Sheeraz and Ali, although this evidence on its own is by no means dispositive proof that they worked 12 hours per day, six to seven days per week.

- [201] I do accept that neither Sheeraz nor Ali were able to testify with precision about exactly how many hours they worked each day, and that they may have oversimplified matters in asserting that they worked 12 hours per day, six to seven days per week. The bottom line is that for the vast majority of the time that both Sheeraz and Ali worked at Mucho Burrito Vancouver, they worked from open until close, every weekday and most weekends.
- [202] With regard to remuneration, I find it more difficult to accept Sheeraz and Ali's viva voce evidence. Both asserted in their trial testimony that when they started working at Mucho Burrito Vancouver, Nabeela and Shahbaz told them they would be paid \$14 per hour, they would not receive their wages right away, and they could expect to receive a "lump sum payment" some time "in the future". Thus, the arrangement was supposed to be "the same" as the one that had been struck when they started working at Mucho Burrito Regina. In cross-examination, Sheeraz and Ali both agreed that this arrangement was never put into writing. They also agreed that no one ever kept track of their hours, or kept a running total of their wages. Further, since the wages were never paid, there were never any payroll deductions. Finally, Sheeraz and Ali's description of the arrangement did not address the fact that during the time period in issue, Shahbaz and Nabeela paid for all or almost all of the family expenses. For example, Sheeraz's ATC fees were paid for by Noble Foods. Perhaps more importantly, Sheeraz and Ali never had to pay anything for room or board during the entire time that they worked at Mucho Burrito Vancouver and lived at Shahbaz's house in Surrey. And after the acquisition of the Maple Ridge townhouse, the mortgage payments and other carrying costs for the property were paid out of accounts controlled by Shahbaz and Nabeela.
- [203] In the result, I find that Sheeraz and Ali worked at Mucho Burrito Vancouver as part of a joint effort by all of the members of the extended family -- the Ishrats, the Khans, and the Anwars -- to work together and pool their efforts toward the success of Mucho Burrito Vancouver. To use a phrase uttered by Nabeela during her trial testimony, they "all decided to work as a family to help each other out". Thus, to the extent that there was any discussion of a specific wage or hourly pay rate that Sheeraz and Ali were to receive, I find that this figure was put forward as gross pay, on the understanding that Sheeraz and Ali would in the future receive a "lump sum payment" of some net amount.

(f) Sheeraz's Work at Maaco

- [204] The evidence reflects that in or around June 2017, Shahbaz acquired a Maaco franchise in Abbotsford, through his company Sunflame Auto. He financed the purchase with the proceeds from the sale of Mucho Burrito Regina, and a business loan of \$350,000. Over the summer of 2017, Shahbaz located garage space for lease in Abbotsford and oversaw

renovations. In or around August 2017, Shahbaz attended a two-week seminar at Maaco headquarters in North Carolina. Maaco Abbotsford opened for business in or around October 2017.

- [205] Sheeraz testified that after Mucho Burrito Vancouver closed at the end of August 2017, Shahbaz hired him to work as the general manager of Maaco Abbotsford, starting in September 2017. Sheeraz explained that his uncle did not have any experience in the automobile service industry, whereas Sheeraz had completed a nine-month automobile service technician training program, and had also obtained a part-time job at the auto service department at Walmart.
- [206] Sheeraz testified that his duties at Maaco were to include attending local auto dealerships to solicit new business, working at the front counter, providing job estimates to customers, supervising employees, dealing with suppliers, and picking up and dropping off cars for customers. According to Sheeraz, his uncle said he would pay him \$25 per hour. Sheeraz testified that he worked at Maaco every Monday to Friday, from 8 a.m. to 5 or 6 p.m., from September 2017 to November 2018. Shahbaz did not pay him his wages on a regular basis, although he claims that some of his remuneration came from Nabeela continuing to pay the carrying costs for the Maple Ridge property. Sheeraz maintained that Shahbaz committed to pay the balance of his wages at some unspecified time in the future.
- [207] For his part, Shahbaz denied that Sheeraz ever worked at Maaco, as a general manager or in any other capacity. Shahbaz claimed that Sheeraz often hung around at Maaco, where he used the facilities and equipment to restore vehicles as part of his own car-flipping business.
- [208] The few Sunflame Auto payroll and financial records that were placed in evidence have no value in ascertaining which of the parties is telling the truth as regards the work situation at Maaco. Although Sunflame Auto did not issue any T4s to Sheeraz, I cannot draw any inference from this. As with the other two companies that Shahbaz had operated (Sunflame Foods and Noble Foods), it appears that Sunflame Auto's tax and payroll records bore little if any relationship to the truth. For instance, Shahbaz issued Sunflame Auto T4s to Abida and Ayaz, even though neither of them ever worked at Maaco, allegedly to assist them with their immigration applications. For her part, Abida denied ever asking for a fake T4 from Sunflame Auto. I do not need to resolve that dispute, although I am inclined to believe Abida's denial of any involvement. In the end, I have no idea why Shahbaz would cause Sunflame Auto to issue false T4s to Abida and Ayaz, but that is beside the point. The key point is that one could not expect the Sunflame Auto payroll records to shed any light whatsoever on the issue of Sheeraz's alleged employment at Maaco.
- [209] In support of his position that he worked as the general manager at Maaco Abbotsford from September 2017 until November 2018, Sheeraz relies on the testimony of his siblings and five independent witnesses. In particular:

- (a) Ali testified that after Maaco opened, he saw Sheeraz leave for work each morning with Shahbaz, and that on at least one occasion he saw Sheeraz working at the Maaco shop. Abida gave evidence to the same effect. For his part, Ayaz testified that he saw Sheeraz working at Maaco on three separate occasions.
- (b) Mohammed Siddiq Shohab, the former sales manager of an Aldergrove car dealership, gave evidence about sending vehicles to Maaco for repairs. Mr. Siddiq described in some detail his dealings with Sheeraz on behalf of Maaco. Mr. Siddiq's impression was that Sheeraz was a part-owner of the business, along with Shahbaz. In cross-examination, Mr. Siddiq admitted that he sold a particular vehicle, a 2012 Hyundai Elantra, to Sheeraz in his personal capacity. He could not rule out the possibility that he sold other vehicles to Sheeraz, but he had no recollection of doing so.
- (c) Gursewak Singh used to work alongside Sheeraz at a convenience store. Mr. Singh testified that when he needed some body work done on a vehicle, he took it Maaco, where Sheeraz oversaw the work and appeared to be directing other Maaco employees. In cross-examination, Mr. Singh agreed that he could not hear exactly what was said between Sheeraz and the other Maaco workers.
- (d) Bhalinder Singh testified that he worked for Maaco Abbotsford from about July 2018 to October 2018. His recollection was that Shahbaz was "the boss" and Sheeraz was the "manager". To Mr. Singh, they both appeared to have the same level of authority. Mr. Singh identified a photograph taken at Maaco showing Sheeraz, himself, and one other Maaco employee. Mr. Singh was cross-examined at length on the fact that he did not report any income from his alleged work at Maaco, and he may or may not have been authorized to work in Canada at the time. He agreed that he never received a T4 or a record of employment from Maaco. There were financial records showing that Mr. Singh received multiple e-transfers of funds directly from Sheeraz. Without going into detail, I can say that some of the transactions can be linked to funds that clearly came from Sunflame Auto or from Shahbaz. Thus, on the one hand, the record of transactions with Sheeraz could be supportive of an inference that Mr. Singh directly worked with Sheeraz in fixing up and flipping cars. On the other hand, this would not explain the record of transactions with Shahbaz or Sunflame Auto, which could only be regarded as evidence of some kind of financial transaction between Mr. Singh and Maaco itself, possibly in compensation for his work at the Maaco franchise.
- (e) Gursimranjot Dhillon was a friend and former co-worker of Sheeraz at Walmart. She testified that she went to Maaco multiple times seeking a quote for a damaged vehicle. On each occasion she dealt with Sheeraz, who furnished her with a quote, and who appeared to be working at the Maaco customer service counter and front office.
- (f) Gurpreet Bansal was the owner of an auto repair business in Abbotsford that subcontracted Maaco to do autobody repair and alignment work. Mr. Bansal dealt with Sheeraz on behalf of Maaco. Sheeraz would pick up and drop off vehicles from Mr. Bansal's business, and also

spoke on the phone with Mr. Bansal. Mr. Bansal's impression was that Sheeraz dealt mostly with customers and that he did not personally do any vehicle body work. The cross-examination of Mr. Bansal focused on how he purchased salvaged vehicles from ICBC, and whether he had a business number.

[210] Sheeraz also presented documentary evidence and text message exchanges in support of his position. In particular:

- (a) Sheeraz identified a Maaco business card bearing his name, although it was misspelled as Sheeraz "Anower" rather than "Anwar". The card identified Sheeraz as the general manager and listed Sheeraz's cell phone number. According to Sheeraz, Shahbaz stated that he ordered the cards but did not have to pay because the printing company misspelled Sheeraz's name.
- (b) Shahbaz used Sheeraz's photograph for a Maaco advertisement in a newspaper. Shahbaz admitted this, explaining that he was targeting the South Asian market and therefore wanted a photo of a young South Asian male in his advertisement.
- (c) Sheeraz tendered a practicum or apprentice evaluation form for someone named Jason Pastorchik. The form had been completed and signed by Sheeraz, certifying that Mr. Pastorchik had completed his apprenticeship at Maaco. For his part, Shahbaz admitted that he had hired an apprentice, and that Sheeraz completed the evaluation form, although Shahbaz could not say why because he was not in the shop at the time.
- (d) In a text message exchange on 27 February 2018, there is a photo showing Sheeraz at the Maaco shop wearing a painter suit. Nabeela texted Shahbaz to ask if Sheeraz was going to paint, and Shahbaz responded that he had painted a car. This text message establishes that Sheeraz was at Maaco, and that he was using the equipment to paint a vehicle. However, on its own, it is not proof of anything more, since it could easily fit with Shahbaz's claim that Sheeraz simply used the Maaco shop and equipment to restore vehicles as part of his own car-flipping business.
- (e) There are other text message exchanges between Sheeraz and Shahbaz in which the two of them were evidently discussing various Maaco-related tasks. More specifically, there are several text exchanges in which Sheeraz and Shahbaz discussed picking up or dropping off various vehicles at Maaco. In another text, Shahbaz sent Sheeraz directions to an auto dealership in Surrey. In my view, these text messages support Sheeraz's position that he was working at Maaco, under Shahbaz's direction.

[211] In support of his position that Sheeraz never worked as the general manager at Maaco, Shahbaz presented evidence from the following two independent witnesses:

- (a) Harpreet Bhanga testified that he worked as an automotive refinisher at Maaco for seven months, from late 2017 into early 2018. Mr. Bhanga knew Sheeraz as Shahbaz's nephew, but he did not believe Sheeraz actually worked at Maaco. Mr. Bhanga testified that he took no instructions from Sheeraz and did not see him doing or directing any work. In cross-

examination, Mr. Bhanga agreed that he did most of his work inside an automotive detailing booth, as much as two or three hours at a time. Mr. Bhanga testified that he coordinated his work with two others, a prepper and a body repair man. He said he never worked with Bhalinder Singh, who was not a Maaco employee. When recalled and asked about the photograph of himself, Sheeraz, and Bhalinder Singh, Mr. Bhanga maintained that Mr. Singh never worked at Maaco.

- (b) Christian Richer testified that he worked as an autobody repair person at Maaco for about three or four months in the fall of 2017, right after the business opened its doors. Mr. Richer testified that Shahbaz was his boss. Mr. Richer knew Sheeraz but did not believe he was a Maaco employee. Sheeraz never gave Mr. Richer instructions, and Mr. Richer never saw him work on vehicles or deal with customers. I note that Mr. Richer worked at Maaco when the business first opened, and Sheeraz claimed that during this time he was acting on Shahbaz's instructions by going around to local dealerships to drum up business for Maaco.
- [212] Weighing up the conflicting evidence on the topic of whether Sheeraz ever worked as an employee at Maaco, I consider the independent evidence of Mr. Siddiq and Mr. Bansal to be particularly compelling. I would place less weight on Bhalinder Singh's testimony, as I am unable to determine whether or not it was truthful. I also find the documents and text messages relied upon by Sheeraz to be supportive of his position.
- [213] I give little weight to Mr. Richer's testimony because, as explained above, he only worked at Maaco Abbotsford for three or four months, near the beginning, during a time frame when Sheeraz contends that he was frequently off-site attending local dealerships in an effort to drum up business, on Shahbaz's instructions.
- [214] With regard to Mr. Bhanga's evidence, without questioning his credibility, his testimony leaves room for the possibility that Sheeraz handled aspects of the Maaco business with which Mr. Bhanga had no direct involvement, such as taking quotes, dealing with customers, picking up and dropping off customer vehicles, and interacting with dealerships and suppliers. Also, there is the photo showing Mr. Bhanga together with Sheeraz and Bhalinder Singh at Maaco.
- [215] Finally, Sheeraz's description of the manner in which Shahbaz got him to work for Maaco fit a broader pattern in which Shahbaz was able to convince his nephews and niece to serve as a non-arm's length labour force for his various businesses, working on terms that an arm's length employee would never accept. The circumstances surrounding Sheeraz's work at Maaco fit that pattern. In March 2016, Shahbaz -- who had no personal experience in the automotive servicing or repair industry -- encouraged and financed Sheeraz's attendance at a nine-month automotive technician training program. Then in the summer of 2016, almost one year before acquiring his first Maaco franchise, Shahbaz incorporated Sunflame Auto. As Mucho Burrito Vancouver was winding down in the summer of 2017, Shahbaz directed more and more of his energy toward Maaco. I find that Shahbaz's plan all along was to transition to a business in the automotive service industry, and that he expected Sheeraz to

work for him in this new undertaking.

[216] Weighing all the evidence that I have just reviewed, I find it more likely than not that Sheeraz did in fact work at Maaco from September 2017 until November 2018. I accept that his hours of work were generally from Monday to Friday, from 7:30 or 8:00 a.m. until 5:00 p.m. With regard to the terms of Sheeraz's remuneration, I accept his testimony that Shahbaz said he would be paid \$25 per hour, although it is quite possible that this was once again a situation where the intent was to give Sheeraz some future lump sum payment, net of shared living expenses. In an arm's length relationship, it would have been highly irregular for a general manager to work at a business of this sort without receiving regular pay on an ongoing basis, but I accept that Sheeraz was willing to do so, given his continuing financial dependency, and his history of working for Shahbaz and Nabeela's other businesses with an expectation of receiving compensation in the future.

Analysis of the Competing Legal Claims

[217] I would catalogue the competing legal claims of the parties as follows: (1) Nabeela's trust claim in relation to the Maple Ridge townhouse; (2) Sheeraz and Ali's counterclaim for occupation rent; (3) Sheeraz and Ali's counterclaim for conversion or unjust enrichment in respect of the GIC funds and funds drawn down on the LOC secured against the Maple Ridge townhouse; (4) Sheeraz and Ali's counterclaim for conversion or unjust enrichment in respect of wages from Mucho Burrito Regina and Mucho Burrito Vancouver; and (5) Sheeraz's counterclaim for conversion or unjust enrichment in respect of wages from Maaco.

(1) Nabeela's Trust Claim in Relation to the Maple Ridge Townhouse

[218] Nabeela acknowledges the presumption under s. 23(2) of the Land Title Act, R.S.B.C. 1996, c. 250, that a certificate of indefeasible title reflects the title holder's actual ownership and legal entitlement to the subject property: *Mac v. Mak*, 2016 BCSC 1140 at para. 107, *aff'd* 2017 BCCA 115. In this case, title to the Maple Ridge townhouse is registered in the names of Sheeraz and Ali, making them the presumptive legal and beneficial owners of the property. A party advancing an adverse claim against the title holder must rebut the presumption by proof of: (i) a contractual agreement or express trust, (ii) a resulting trust, or (iii) a claim of unjust enrichment: *Suen v. Suen*, 2013 BCCA 313 at para. 34.

[219] Nabeela contends that Sheeraz and Ali purchased the Maple Ridge townhouse in trust for her, using the GIC funds to cover the initial deposit of \$21,000 and the subsequent down payment of \$70,028. Nabeela frames her claim alternatively as an express trust claim, or a claim resting on the doctrine of resulting trust. Thus, to overcome the presumption of ownership in favour of Sheeraz and Ali arising from the certificate of indefeasible title, Nabeela must establish on a balance of probabilities that the Maple Ridge property is the subject of either (a) an express trust, or (b) a resulting trust.

(1)(a) Nabeela's Express Trust Claim

- [220] An express trust is created where a person (a settlor) transfers legal title to a property to a transferee (the trustee) with the express intention that title is to be held for the benefit of another (a beneficiary). To establish an express trust, the settlor must use words indicating that the trustee is to hold title for the beneficiary. The three essential elements of an express trust are (i) certainty of intention, (ii) certainty of subject matter, and (iii) certainty of beneficiaries and objects of the trust: *Bradshaw v. Stenner*, 2012 BCCA 296 at para. 135.
- [221] On the findings of fact set out in paragraphs 180 to 192 above, Nabeela's express trust claim must fail on the first element of the test, that is, an absence of certainty of intention. The case law indicates that certainty of intention is ascertained based on an examination of the settlor's words and acts, construed against the background facts, to determine the objective goal or aim of the transaction: *Xu v. Hu*, 2021 BCCA 2 at paras. 16-17; *Virk v. Singh*, 2022 BCCA 153 at para. 48.
- [222] In this case, the weight of the evidence simply does not support Nabeela's claim that she added Sheeraz and Ali to the third GIC with the intent that they would use the funds to acquire real property to be held in trust for Nabeela's benefit until she could qualify for her own mortgage. The certainty of intention required to establish an express trust is not present, and indeed my factual findings compel me to reach the unequivocal conclusion that no such intention ever existed. The evidence establishes that Nabeela added Sheeraz and Ali to the third GIC as a means of compensating them for their previously unpaid work at Mucho Burrito Regina, and not with the express intention that they would acquire a property and hold it solely for her benefit.

(1)(b) Nabeela's Resulting Trust Claim

- [223] A resulting trust arises where title to property is held in one party's name, but that party is not the beneficial owner to the property because he or she acquired the property either in the capacity of a fiduciary, or without giving any consideration: *Pecore v. Pecore*, 2007 SCC 17 at para. 20. In *Pecore* it was held that a gratuitous transfer of property between adults gives rise to a presumption of resulting trust.
- [224] The presumption of resulting trust articulated in *Pecore* can be rebutted where the evidence establishes that a transferee gave something of value in exchange for the transfer of property. As explained in *Bajwa v. Pannu*, 2007 BCCA 260 at para. 16, "[i]f it is found as a fact that the person whose equitable interest is challenged did give value, there can be no resulting trust". The question of whether value is given is an issue of fact to be determined on all the evidence.

- [225] In this case, Nabeela relies on the concept of "purchase money resulting trust". This is a "species of gratuitous transfer resulting trust" that arises where someone contributes to the purchase price of property without taking legal title: *Nishi v. Rascal Trucking*, 2013 SCC 33 at para. 21. See also *Kerr v. Baranow*, 2011 SCC 10 at para. 12; *Pavlovich v. Danilovic*, 2019 BCSC 153 at para. 56.
- [226] Nabeela contends that adding Sheeraz and Ali to the third GIC was a "gratuitous transfer". Nabeela also asserts that she made this gratuitous transfer knowing and expecting that Sheeraz and Ali intended to use the funds to acquire a real property. Nabeela says these circumstances establish the elements of a "purchase money resulting trust".
- [227] I cannot accept Nabeela's position, at least in its entirety, because on the findings of fact I have made above, Nabeela's actions in adding Sheeraz and Ali to the third GIC did not constitute a "gratuitous transfer" within the meaning of the jurisprudence. Nabeela added Sheeraz and Ali to the third GIC as a means of recognizing and compensating them for their previously unpaid work at Mucho Burrito Regina. Thus, Sheeraz and Ali had given consideration for Nabeela's transfer of property to them.
- [228] However, in my view that is not the end of the analysis. I find it significant that rather than simply transferring the entirety of the GIC funds to Sheeraz and Ali, Nabeela purchased a third GIC with five individuals as owners, namely herself, her husband Mohammad, her brother Shahbaz, and Sheeraz and Ali. I find that this was the culmination of an arrangement in which all of the family members agreed to "work together as a family and help each other out". As Nabeela put it, they all had "one business", and "everybody was helping". This arrangement included the pooling of labour, paying for communal expenses like housing, and, in the end, acquiring a property. In my view, Nabeela's words were not mere hollow statements. The evidence establishes that the parties in fact conducted themselves in a manner that is consistent with Nabeela's description of the arrangement.
- [229] One of the objectives of the arrangement was to finance the restoration of Nabeela's house in Calgary, so that it could be sold. Another objective was to pay down Nabeela and Shahbaz's business debts. By the summer of 2016, these objectives had been largely accomplished.
- [230] On 1 December 2015, shortly after Nabeela sold her Calgary property, she bought a GIC in the amount of \$108,000, listing herself and her husband (who clearly had an interest in the Calgary property) as the owners. Later, Nabeela purchased a second GIC and added Shahbaz's name as an owner. I find that she did so in recognition of the fact that she and Shahbaz had been working together toward the success of both Mucho Burrito franchises. They had effectively intermingled their finances, and pooled their efforts, in an effort to make both restaurants profitable and successful.

- [2331] In the spring of 2016, Shahbaz sold Mucho Burrito Regina. I did not hear any evidence about how much Shahbaz sold the business for, or whether he realized a gain from his initial investment, but in any event, the business had been disposed of, so that aspect of the joint family enterprise had come to an end.
- [232] Despite the fact that by June 2016 the two principal objectives that had been presented to Sheeraz and Ali had largely been attained, they had not yet received any lump sum payment or compensation for their work at Mucho Burrito Regina, apart from free room and board while living in Regina. It is true that Noble Foods transferred certain amounts of money into Sheeraz and Ali's bank accounts, ostensibly as wages, but on the findings of fact I made above Nabeela and Shahbaz retained control over Sheeraz and Ali's accounts. Moreover, according to the financial transactions documented in the notices to admit, virtually all of the funds transferred into Sheeraz and Ali's accounts in 2015 and 2016 made their way back into the accounts controlled by Nabeela and Shahbaz.
- [233] By June 2016, Sheeraz and Ali were both in Vancouver, working at Mucho Burrito Vancouver, and they had yet to receive the lump sum payment that Nabeela and Shahbaz had promised them after the sale of Nabeela's Calgary property and the payment of Nabeela and Shahbaz's business debts. At this point, Nabeela purchased a third GIC, listing the owners as herself, Mohammad, Shahbaz, Sheeraz, and Ali. I find that in doing so, Nabeela was intending to include Sheeraz and Ali as joint owners of the funds in the GIC, in furtherance of a plan in which Sheeraz and Ali would use the funds to acquire a property in the Lower Mainland. I emphasize once again that Nabeela did not simply transfer the entire \$108,000 to Sheeraz and Ali. Rather, she added Sheeraz and Ali as registered owners on the third GIC, together with herself, her husband Mohammad, and her brother Shahbaz.
- [234] Sheeraz and Ali maintain that they were to be paid \$14 per hour, and that when one calculates the total wages for the entire time that each of them worked at Mucho Burrito Regina, less taxes, the net figure is equal to or greater than the \$108,000 in the GIC to which Nabeela added their names in the summer of 2016. In the same vein, Ali testified that at one point, Shahbaz showed him a calculation on his phone explaining how Shahbaz and Nabeela came up with the \$108,000 figure. Of course, there is no record of that calculation before the Court. Without the benefit of any records of the hours worked or contemporaneous calculation of net wages, I concluded at paragraphs 202 to 203 above that if there was any discussion of a specific wage or hourly pay rate that Sheeraz and Ali were to receive, this figure was put forward as gross pay, on the understanding that Sheeraz and Ali would eventually receive a lump sum payment of some net amount.
- [235] Considering all of the evidence I have just reviewed, I do not accept Sheeraz and Ali's contention that Nabeela intended to give the entire \$108,000 over to them as compensation for their work at Mucho Burrito Regina. Rather, I find that Nabeela added Sheeraz and Ali to the third GIC intending to give them a share of what remained following the winding up of the family's joint venture in Regina.

- [236] On these findings, I conclude that Sheeraz and Ali used what were in effect joint funds of themselves, Nabeela, and Shahbaz, to fund the purchase of the Maple Ridge townhouse. Although title to the Maple Ridge townhouse was registered in Sheeraz and Ali's names, in fact Sheeraz and Ali were the beneficial owners of a one-half interest, and Nabeela, Mohammad, and Shahbaz were the beneficial owners of the other one-half interest. In other words, this was a partial "purchase money resulting trust". Thus, I find that the presumption of indefeasible title is defeated by proof of a resulting trust, although the resulting trust relates not to the entirety of the purchase funds, but rather only to Nabeela's one-half interest (on behalf of herself, Mohammad, and Shahbaz) in the GIC used to fund the purchase.
- [237] As explained in Nishi at para. 17, where a purchase money resulting trust is established, the gratuitous contributor is entitled to a share of the property "in proportion to [his or her] contribution to the purchase price". In this case, I find that Nabeela (on behalf of herself, her husband, and Shahbaz) has a beneficial one-half interest in the Maple Ridge townhouse.
- (2) Sheeraz and Ali's Counterclaim for Occupation Rent
- [238] Sheeraz and Ali assert that they are the sole legal and beneficial owners of the Maple Ridge townhouse, and on that basis they are entitled to market rent, above and beyond the carrying costs of the Maple Ridge townhouse, on account of Nabeela's occupation of the property from September 2017 up to the date of judgment in October 2023.
- [239] Sheeraz and Ali cite Mac as an example of a case where an occupying party with no legal right to possession of the subject property was obliged to pay damages for occupation rent to the property owner: Mac at paras. 154-156. They also cite Klein v. Sun, 2018 BCSC 245 at paras. 207-209, in which a similar result accrued.
- [240] The starting point in Sheeraz and Ali's claim for occupation rent is their assertion that from the outset they have been the legal and beneficial owners of the Maple Ridge townhouse. However, in my legal analysis of issue (1) above, I determined that from the date that the Maple Ridge townhouse was acquired, Nabeela (on behalf of herself, Mohammad, and Shahbaz) has been the beneficial owner of a one-half interest in the property.
- [241] Further, the conclusion that Nabeela is a beneficial owner of a one-half interest in the Maple Ridge townhouse flows from a finding that all of the parties involved - Nabeela, Shahbaz, Sheeraz, and Ali - had reached an agreement to pool their resources and work together toward the success of Nabeela and Shahbaz's Mucho Burrito business.
- [242] I find that this family enterprise continued after Sheeraz and Ali purchased the Maple Ridge townhouse. The parties continued to intermingle their finances. This arrangement was not a one-way street. While Sheeraz and Ali did not receive or retain their pay for work at Mucho Burrito Vancouver, and while they did not occupy the Maple Ridge townhouse, they lived with Shahbaz without paying room and board, and Shahbaz and Nabeela used

revenues from the Mucho Burrito business to pay the carrying costs for the Maple Ridge property and other expenses such as Sheeraz's ATC tuition fees and insurance for the vehicle Sheeraz drove.

[243] I find that this family enterprise continued until June 2019, when Sheeraz, Ali, and their siblings moved out of Shahbaz's residence and got their own apartment. By this point in time, the parties had separated their financial affairs and the joint family enterprise had come to an end. Mucho Burrito Vancouver had been closed for almost two years. Sheeraz had changed the password for his online banking so that Nabeela and Shahbaz no longer had access to his bank accounts. Sheeraz and Ali were living on their own, had assumed responsibility for their own housing costs, and had asserted their financial independence from their aunt and uncle.

[244] Meanwhile, Nabeela and her family continued to occupy the Maple Ridge townhouse. It is true that Nabeela continued to pay the mortgage through the joint account that she held with Sheeraz and Ali. However, the appraisal report tendered at trial shows that the market rent for the Maple Ridge townhouse was substantially in excess of the carrying costs for the property. Together, Sheeraz and Ali were beneficial owners of a one-half interest in the property, but they received no benefit for their interest. Indeed, when the dispute about the ownership of the Maple Ridge townhouse came to a head in October 2019, Sheeraz and Ali tried to evict Nabeela from the property, but those efforts were thwarted when Nabeela filed the current action in this Court. To be clear, on my finding that Nabeela has a beneficial one-half interest in the Maple Ridge townhouse, there would not have been a legal basis for Sheeraz and Ali to evict Nabeela under landlord and tenant law. However, the fact remains that Sheeraz and Ali also had a one-half interest in the property, and by October 2019, they had taken concrete steps to act on that interest.

[245] I conclude that Sheeraz and Ali are entitled to damages on account of Nabeela's continued exclusive occupation of what was in effect a jointly owned property, from June 2019 until the date of judgment. The quantum of those damages is \$9,000, being one-half of the difference between the monthly market rent and the monthly mortgage costs from June 2019 up to and including October 2023, as set out in more detail in Appendix A.

(3) Sheeraz and Ali's Counterclaim in respect of the GIC and LOC Funds

[246] Sheeraz and Ali allege that one or both of Nabeela and Shahbaz misappropriated the \$16,000 left over after the purchase of the Maple Ridge townhouse. Sheeraz and Ali also allege that Shahbaz misappropriated a further \$19,000, taken from the LOC between 1 June 2018 and 31 December 2018. Sheeraz and Ali claim damages for these amounts under the tort of conversion.

[247] To make out a claim for conversion, a plaintiff must establish on a balance of probabilities that (a) the defendant committed a wrongful act in relation to goods owned by the plaintiff, (b) the wrongful act involved the handling, disposition, or destruction of the goods, and (c) the wrongful act was committed with the intention of interfering with or destroying the

plaintiff's interest in the goods, or alternatively that the wrongful act had that effect: *Ast v. Mikolas*, 2010 BCSC 127 at para. 126. The subject matter of the claim is personal property, in other words "chattel", which can take the form of either "goods" or "funds": *Columere Park Developments Ltd. v. Enviro Custom Homes Inc.*, 2010 BCSC 1248 at para. 30, citing, *inter alia*, *Royal Canadian Legion, Branch No. 15 v. Burkitt*, 2005 BCSC 1752 at para. 104.

- [248] Dealing first with the excess GIC funds of \$16,000, I find that Sheeraz and Ali's conversion claim in relation to these funds fails for lack of proof that they were the owners of the subject funds, and lack of proof that either Nabeela or Shahbaz committed any wrongful acts in using those funds to cover what were in effect family financial obligations.
- [249] To explain, in my analysis of issue (1) above I determined that when Nabeela added Sheeraz and Ali's names to the third GIC, she did so with the intention of making them joint owners, or part owners of the GIC funds, along with Nabeela, Mohammad, and Shahbaz. Thus, one cannot say that Sheeraz and Ali were the exclusive owners of the balance of the funds that remained in Sheeraz's account following the purchase of the Maple Ridge townhouse. At best, Sheeraz and Ali had a one-half interest in the remaining \$16,000.
- [250] More importantly, in my analysis of issue (2) above, I found that (i) the parties had from the outset reached an agreement to pool their resources and work together toward the success of Nabeela and Shahbaz's Mucho Burrito businesses, and (ii) that agreement continued after the acquisition of the Maple Ridge townhouse. Thus, even after the purchase of the Maple Ridge townhouse, the finances of the parties were intermingled. The intermingling of finances allowed Nabeela and Shahbaz to meet the financial obligations of their business and cover the living costs of all of the parties. Sheeraz and Ali had agreed to this arrangement in Regina, endorsed it when they accepted the GIC funds and used them to purchase the Maple Ridge townhouse, and continued to operate under it after taking possession of the property. In these circumstances, I cannot accept that Nabeela or Shahbaz committed any unlawful or wrongful act in using the remaining \$16,000 of funds derived from the GIC to meet ongoing financial demands of the business, or to cover personal expenses of various family members.
- [251] Turning next to the \$19,000 drawn on the LOC, I find that Sheeraz and Ali's claim of conversion in relation to these funds must also fail. I do accept that, because the LOC was obtained by Sheeraz and Ali and was solely in their names, it was in one sense quite wrong for Shahbaz to draw down \$19,000 in further debt without Sheeraz and Ali's knowledge and approval. However, the LOC was secured against a property in which Nabeela and Shahbaz together had a one-half interest. More importantly, I find that Shahbaz used the LOC funds in much the same way as the GIC funds had been used, namely to meet the family's financial obligations as part of a joint venture in which Nabeela, Shahbaz, Sheeraz, and Ali were pooling their labour and financial resources with the goal of making the family business successful. As a consequence, I am not satisfied on a balance of probabilities that Shahbaz committed the tort of conversion when he used the \$19,000 in LOC funds, secured against a jointly-held property, to cover financial obligations relating to the family joint

venture.

(4) Sheeraz and Ali's Claims in Relation to Wages from Mucho Burrito

[252] Sheeraz and Ali claim that even after Nabeela had added their names to the third GIC, they were never properly or fully compensated for their subsequent work at Mucho Burrito Vancouver. They claim damages based on the tort of conversion, or alternatively based on the equitable doctrine of unjust enrichment.

(4)(a) Sheeraz and Ali's Claim for Conversion in Relation to Mucho Burrito Wages

[253] In closing submissions, Nabeela and Sheeraz emphasized that both Mucho Burrito franchises were owned and operated through corporations. Mucho Burrito Regina was owned and operated through Shahbaz's company, Sunflame Foods. Mucho Burrito Vancouver was owned and operated through Nabeela's company, Noble Foods. When Sheeraz and Ali worked at Mucho Burrito Vancouver, their employer was Noble Foods. Nabeela and Shahbaz say this is significant because any unpaid wages would be a debt owed by Noble Foods, not by Nabeela or Shahbaz personally. Given the company's status as a separate legal entity responsible for its own liabilities and debts, the only basis for holding Nabeela or Shahbaz personally responsible for unpaid wages of the company would be by way of director or officer liability under s. 96 of the Employment Standards Act, R.S.B.C. 1996, c. 113 [ESA].

[254] The ESA limits officer and director liability to a maximum of two months of unpaid wages for each employee. The legislation also sets out an exclusive procedure for unpaid wage claims against officers or directors, under which an aggrieved employee must make a complaint to the Employment Standards Branch within six months of the termination of employment. Thus, "the limited liability of a director for unpaid wages arises only after enforcement proceedings have been initiated under the ESA" and "a determination has been made" under that regime: *Bowman v. Silverdale Recycling Ltd.*, 2010 BCSC 287 at para. 21, citing *Canadian-Automatic Data Processing Services Ltd. v. Bentley*, 2004 BCCA 408 [Canadian-Automatic] at paras. 57, 67, 72. As explained in *Canadian-Automatic* at para. 57, the ESA's director and officer liability provision is "a statutory exception to the general rule that the separate legal personality of a corporation insulates principals of the company from liability for its debts".

[255] Recognizing all of this, Sheeraz and Ali have not in fact advanced a claim for an unpaid debt or breach of contract for failure to pay wages. Rather, they advance a claim against Nabeela and Shahbaz for the tort of conversion, based on the alleged misappropriation or diversion of funds paid into the accounts of Sheeraz and Ali by the corporate employers. As I understand it, the focus of the conversion claim is not on the corporate employer's failure to pay wages, but rather the alleged conversion of wages that had already been paid into Sheeraz and Ali's accounts. Sheeraz and Ali rely on s. 118 of the ESA, which states that nothing in that legislative scheme deprives a person of the right to bring an action that could be maintained independently of the rights and remedies set out in the ESA.

- [256] I agree with Sheeraz and Ali that their claim for conversion of wages paid into their account is not barred by the ESA. To borrow a phrase from *Macaraeg v. E Care Contact Centers Ltd.*, 2008 BCCA 182 at para. 97, the conversion claim exists "apart from the provisions of the ESA".
- [257] Moving to the merits of the conversion claim, while Sheeraz and Ali assert that it is focused on the unauthorized transfer of funds from their accounts rather than on unpaid wages, the figures in their closing argument do not match up with that theory of the case. For example, Sheeraz claims that in 2016 he earned a total of \$19,600 in wages, "net of taxes", from his work at Mucho Burrito Vancouver. Sheeraz goes on to claim damages in that full amount on the basis that these funds were "either transferred from [Sheeraz's] account or diverted for [Nabeela and Shahbaz's] own uses". However, the evidence establishes that in 2016 Sheeraz in fact received a total of \$18,657 in deposits on account of his wages, and that Nabeela and Shahbaz subsequently transferred \$12,953 out of Sheeraz's account. In my view, only this last amount could properly be included in Sheeraz's conversion claim. The balance of the wages that Sheeraz claims to have earned and never received in 2016, namely \$6,647, represents a debt owed by the employer, Noble Foods. Given the separate legal status of the corporation, the only way that Sheeraz could pursue either Nabeela or Shahbaz for payment of that additional amount would be by way of a claim for director or officer liability under the ESA.
- [258] Even if Sheeraz and Ali's conversion claim was limited to the amounts transferred out of their accounts by Nabeela or Shahbaz, the claim would fail in any event. Sheeraz and Ali have not proven that the impugned transfers were wrongful acts carried out with the intent or effect of depriving them of the funds in question. The evidence reflects that Nabeela and Shahbaz used Sheeraz and Ali's accounts interchangeably with many others, to meet the family's financial commitments and cover various business and personal expenses. Although all of this might be regarded as highly irregular in the context of parties dealing with each other at arm's length, in this case it was part of a broader agreement between family members to pool their labour and resources with the objective of making the family business a success. Sheeraz and Ali were parties to this arrangement. They benefitted from it by receiving free room and board while they lived and worked in Regina, and by being added as joint owners to the third GIC as a means of recognizing their contribution to the Mucho Burrito Regina franchise. Even after Sheeraz and Ali were added to the third GIC and had purchased the Maple Ridge townhouse, the family joint venture continued until May 2019, by which point the parties had separated their finances and Sheeraz and Ali were living independently.

(4)(b) Sheeraz and Ali's Claim for Unjust Enrichment in Connection with their Work at Mucho Burrito

- [259] Nabeela and Shahbaz stand on their contention that the employer, Noble Foods, is a separate legal entity responsible for its liabilities and debts. On this footing, Nabeela and Shahbaz repeat their submission that the only way to advance a claim for unpaid wages

against anyone but the corporation itself is by way of a claim for officer or director's liability under the ESA. They rely on Canadian-Automatic to say that the ESA regime cannot be "circumvented" merely by advancing an in-trust or equitable claim against someone other than the corporation.

- [260] I do not agree with Nabeela and Shahbaz's interpretation of the decision in Canadian-Automatic. The majority judgment did not hold that the plaintiff's unjust enrichment claim against a corporate officer was barred by the ESA. Rather, Justice Mackenzie, for the majority, relied on the separate and distinct legal personality of the corporate employer as a consideration weighing against personal liability of the corporate officer in the "juristic reason" component of the unjust enrichment analysis.
- [261] I turn to the merits of Sheeraz and Ali's unjust enrichment claim in connection with their work at Mucho Burrito Vancouver. It is trite law that the three essential elements of an unjust enrichment claim are: (i) an enrichment of the defendant, (ii) a corresponding deprivation of the plaintiff, and (iii) the absence of a juristic reason for the defendant's enrichment: Kerr at paras. 36-40.
- [262] It is not clear to me whether Sheeraz and Ali's unjust enrichment claim relating to work at Mucho Burrito Vancouver is focused merely on the amounts paid into their bank accounts by the corporate employer and subsequently transferred out by Shahbaz and Nabeela, or alternatively whether the claim is that Nabeela and Shahbaz were unjustly enriched by the full amount of Sheeraz and Ali's unpaid work. However, for the reasons that follow, I conclude that result would be the same on either theory of the case.
- [263] Accepting that the claim is for the full amount of unpaid work, I must first consider whether Nabeela and Shahbaz were personally enriched by having Sheeraz and Ali work at Mucho Burrito Vancouver, full-time, six to seven days per week (with the exception of certain periods where one or both nephews worked fewer hours around other commitments), without the corporate employer paying them wages the way an arm's length worker or employee would be paid.
- [264] Nabeela and Shahbaz contend that this is another situation where the argument put against them ignores the separate and independent corporate status of the employer. They say that any unpaid work performed by Sheeraz and Ali was a benefit to the corporate employer Noble Foods, not a personal benefit to Nabeela and Shahbaz. They say Sheeraz and Ali should not be allowed to rely on principles of equity to override the separate legal identity of the corporate employer.
- [265] Sheeraz and Ali maintain that in the context of a closely-held company, particularly where the company and its principals have intermingled business and personal expenses to the point where their financial positions are virtually indistinguishable, Sheeraz and Ali's allegedly free labour benefitted not only the corporate employer, but also Nabeela and Shahbaz.

- [266] Even if one were to accept the viability of Sheeraz and Ali's legal submission, their argument fails on its facts because there is no evidence that either Nabeela or Shahbaz in fact realized any actual benefit from the work performed by Sheeraz and Ali at Mucho Burrito Vancouver. I say that because in the end the Mucho Burrito Vancouver franchise failed. The uncontested evidence is that the business was losing money and Nabeela and Shahbaz simply negotiated a payout of the lease and closed the company down.
- [267] I therefore conclude that Sheeraz and Ali have failed to establish that Nabeela and Shahbaz realized any personal benefit from the arrangement in which Sheeraz and Ali worked at Mucho Burrito without receiving wages or pay. However, in the event that I am wrong in this conclusion I will move on to consider the second and third branch of the unjust enrichment test.
- [268] With regard to the second branch of the analysis, I have no difficulty determining that Sheeraz and Ali suffered a deprivation when they worked at Mucho Burrito Vancouver, full time, six to seven days per week (at least for most of the time frame in issue), without receiving wages the way an arm's length employee would.
- [269] Turning to the third stage of the analysis, my conclusion is that whatever other weaknesses there may be in Sheeraz and Ali's unjust enrichment claim, it must fail at this stage. I find there was a juristic reason for any benefit received by Nabeela and Shahbaz. That juristic reason is a necessary incident of my finding, repeated throughout these reasons, that Nabeela, Shahbaz, Sheeraz, and Ali agreed to pool their labour and resources with the objective of making the family business a success. To quote directly from paragraph 476 of Sheeraz and Ali's closing submissions, all four of the parties to this action had entered into an "arrangement to work in the family business for the greater good of the family".
- [270] This arrangement first took shape in Regina, when Sheeraz and Ali agreed to work at Mucho Burrito Regina without receiving their pay up front, on the understanding that they would be compensated by a lump sum payment after Nabeela had renovated and sold her Calgary property and Nabeela and Shahbaz had paid down their debts. Nabeela's act of adding Sheeraz and Ali as joint owners on the third GIC was part of the agreement, as was the subsequent purchase of the Maple Ridge townhouse with the GIC funds. The arrangement went on after the purchase of the Maple Ridge townhouse, when Sheeraz and Ali continued to work at Mucho Burrito Vancouver without receiving pay or wages the way an arm's length employee would. This arrangement was not a one-way street. In addition to adding Sheeraz and Ali as joint owners on the third GIC, Nabeela and Sheeraz used funds from Mucho Burrito Vancouver to cover all of the family's business and personal expenses. The finances of the parties were intertwined. By mid-2017, Nabeela and Sheeraz decided to close down Mucho Burrito Vancouver. The business was losing money, and Nabeela and Shahbaz chose to pay out the lease and cease operations. At that point, neither Sheeraz or Ali made any claim against the company, or Shahbaz, or Nabeela. Indeed, the intermingling of finances and sharing of costs continued until May 2019, well after Mucho Burrito Vancouver had shut its doors.

[271] On these facts, Sheeraz and Ali have failed to establish an absence of juristic reason for denying their claim. I hasten to add that the Mucho Burrito Vancouver franchise failed, and there is no evidence that Nabeela and Sheeraz realized any net benefit from this arrangement. This was a family venture. The first part of the venture resulted in at least some success, through the acquisition of the Maple Ridge townhouse, purchased by Sheeraz and Ali, with joint funds, with both factions having a beneficial one-half interest in the property. The second part of the venture resulted in failure when the second Mucho Burrito franchise was shuttered. The evidence suggests that no one realized any material gain from this part of the venture. In my view, the mutual agreement of the parties to carry on a family venture constituted a juristic reason for denying Sheeraz and Ali's unjust enrichment claim relating to their work at Mucho Burrito Vancouver.

(5) Sheeraz's Counterclaim in respect of Unpaid Wages from Maaco

[272] Sheeraz claims damages for unpaid work at Maaco Abbotsford, on the basis of both (a) conversion, and (b) unjust enrichment. Recall that after reviewing the conflicting evidence on this issue, I concluded that Sheeraz did in fact work as the general manager of Maaco, full-time, Mondays to Fridays, from September 2017 to November 2018. However, the fact remains that Maaco was owned and operated through a corporation, Sunflame Auto. Once again, Sheeraz faces a legal hurdle in claiming damages against Shahbaz in his personal capacity in connection with the corporate employer's failure to pay wages.

(5)(a) Sheeraz's Claim for Conversion in respect of Maaco Wages

[273] I repeat the general rule as stated in *Canadian-Automatic* at para. 57 that, "the separate legal personality of a corporation insulates principals of the company from liability for its debts". In the face of this basic proposition, the only way that Sheeraz could maintain his claim for conversion in respect of wages from Maaco would be to establish that the corporate employer actually paid the wages, and Shahbaz thereafter transferred the funds from Sheeraz's account or otherwise appropriated them. However, the evidence does not prove that Sunflame Auto ever paid any wages to Sheeraz, hence there is no basis on which Sheeraz could establish that Shahbaz committed the tort of conversion by subsequently appropriating or transferring funds out of Sheeraz's account. I would therefore dismiss this claim.

(5)(b) Sheeraz's Unjust Enrichment Claim in respect of Maaco Wages

[274] I once again reject Shahbaz's submission that the limited liability of corporate directors or officers under the ESA has the effect of barring in-trust or equitable claims brought against a company's principals. I do not agree that the majority judgment in *Canadian-Automatic* supports that broad conclusion. I will proceed to consider the merits of Sheeraz's unjust enrichment claim.

- [275] At the first stage of the analysis, counsel for Shahbaz again emphasizes the distinct legal status of Sunflame Auto, the corporation through which the Maaco franchise was owned and operated. Shahbaz maintains that any benefit associated with Sheeraz's working at Maaco was realized by Sunflame Auto. To hold otherwise would ignore the legal distinction between Sunflame Auto and Shahbaz.
- [276] Shahbaz's argument on benefit relies heavily on the policy considerations that underlie the distinction between a corporation and its principals. However, the unjust enrichment jurisprudence augers for a "straightforward economic approach" to the benefit-detriment analysis, with broader policy considerations left to the third and final element of the test: *Peter v. Beblow*, [1993] 1 S.C.R. 980 at p. 990.
- [277] In any event, I do not find Shahbaz's legal argument on benefit to be convincing, at least not on the facts of this case. There is overwhelming evidence that Shahbaz intermingled the personal and corporate finances of all three of the closely-held companies under his control -- Noble Foods, Sunflame Foods, and Sunflame Auto -- to the point where Shahbaz's personal financial position was virtually indistinguishable from that of the companies.
- [278] In the course of his testimony, Shahbaz admitted to the following:
- (a) Using funds from the corporate bank account of Sunflame Foods (Shahbaz's company) to pay wages and cover expenses on behalf of Noble Foods (his sister's company);
 - (b) Using funds from the corporate bank account of Noble Foods (again, his sister's company) to cover his own personal expenses, such as mortgage payments and car insurance;
 - (c) Using funds from the Noble Foods bank account to pay Sheeraz's ATC tuition fees because, "that was the only source we had" and "there was no other source of income" at the time;
 - (d) Issuing false T4s and writing cheques from Sunflame Auto's bank account to his niece Abida and his nephew Ayaz, in an ostensible effort to strengthen their immigration applications;
 - (e) Using funds from Sunflame Auto's bank account to pay for personal expenses, suggesting that these payments could be characterized as dividends;
 - (f) Using funds from Sunflame Auto's bank account to purchase a vehicle from Sheeraz, either for Shahbaz's daughter Mana, or to assist Sheeraz in what Shahbaz claimed to be an entirely separate vehicle flipping business; and
 - (g) Using funds from Sunflame Auto's bank account to purchase airfare for Sheeraz, on multiple occasions.
- [279] I conclude that the finances of Shahbaz and his company Sunflame Auto were intermingled to such an extent that any significant financial benefit to the company would effectively result in a personal benefit to Shahbaz. Further, while the evidence reflects that Shahbaz ultimately shut down the Abbotsford franchise because it was not making "enough money", Shahbaz also testified that he parlayed some of the assets from the Abbotsford franchise

into the Langley franchise, which has since become very successful. The evidence in its totality gives rise to an irresistible inference that Sheeraz's services in working without pay as Maaco's general manager, five days per week, for some 13 to 14 months, not only benefitted Sunflame Auto as the corporate employer, but also resulted in a personal benefit to the company's principal Shahbaz.

- [280] Turning to the second stage of the unjust enrichment analysis, I have no difficulty concluding that Sheeraz's work as the general manager of Maaco Abbotsford, full-time, for 13 to 14 months, without receiving any pay, amounted to a detriment within the meaning of the case law.
- [281] That brings me to the final stage of the analysis, under which Sheeraz must establish an absence of a juristic reason for the benefit received by Shahbaz. The initial burden is on the moving party to establish an absence of any "juristic reason" within any of the traditionally recognized "categories" of contractual, common law, or statutory duties that could explain the opposing party's enrichment. If that burden is met, then a "de facto burden" rests on the opposing party to show that there is some objectively justifiable reason for the enrichment, having regard to the reasonable expectations of the parties, and public policy considerations: Kerr at para. 43, applying Garland v. Consumers' Gas Co., 2004 SCC 25 at paras. 44-46. In the end, the court must be satisfied not merely that there has been an enrichment and a corresponding deprivation, but that the enrichment was "unjust": Peter at p. 990.
- [282] I am satisfied that Shahbaz's enrichment cannot be justified under any of the traditional categories. I find that Sheeraz's work as Maaco's general manager was not part of the previously agreed-upon family enterprise in which the parties worked together for the benefit of the family business. The family business was focused on the Mucho Burrito franchises in Regina and Vancouver, and the enterprise carried on into the joint ownership of the Maple Ridge townhouse, but clearly did not extend to Maaco, which was a separate undertaking pursued by Shahbaz. There is no evidence that Shahbaz operated the business jointly or cooperatively with other members of his family. He simply started up the business, and convinced Sheeraz to work there as the general manager, promising to pay him later, which he never did.
- [283] Moving past the recognized categories of justification, I go on to find that Shahbaz has failed to establish any other objectively justifiable reason for his enrichment to the detriment of Sheeraz, for the reasons that follow.
- [284] The reasonable expectation of the parties at the time was that Sheeraz would receive a future lump sum payment in exchange for his work as the general manager at Maaco, at a rate of \$25 per hour. I find it more likely than not that Shahbaz initially intended to pay Sheeraz lump sum compensation at some future point, as Nabeela had previously done in relation to the GIC funds, but that he later backed out of this commitment after breaking off relations with the Anwar family. On my assessment of the evidence, two things are clear.

First, I am satisfied that Shahbaz led his nephew to believe he would be paid for working as Maaco's general manager. Second, in the end Shahbaz reneged on that promise. All of this weighs in favour of recognizing Sheeraz's unjust enrichment claim rather than denying it.

[285] Shahbaz's most compelling argument is the contention that holding him responsible for the payment of Sheeraz's wages would involve the use of equitable relief to sweep aside the hallowed legal principle that a company is a distinct entity responsible for its own debts and obligations.

[286] This argument found favour with the majority in *Canadian-Automatic*, wherein Mackenzie J.A. reasoned at para. 72 that "public policy" provided a strong rationale for denying the plaintiff's claim, considering that the "separate legal personality of a corporation and its sole liability for its debts are fundamental to our economic system". These concerns were particularly apposite because the party seeking equitable relief was a sophisticated commercial creditor aware of its own business risks, not a vulnerable employee whose interests the ESA scheme was meant to protect. Mackenzie J.A. concluded as follows:

[74] The unjust enrichment remedy is based on equitable principles of fairness embraced by the term "juristic reason". This case represents a new category for the doctrine, and the question becomes whether the principled approach should extend the remedy to include it. In my view, extension should depend upon whether it is fair and equitable to shift the loss from ADP to Mr. Bentley. ADP does not share the unique vulnerability of employees that the Employment Standards Act was intended to address. It simply suffered a loss from a foreseeable commercial risk, partly because it failed to effectively invoke its contractual protection against that risk. Mr. Bentley did not contribute personally to ADP's loss. There is no suggestion that he was personally involved in any deception of ADP. His liability exposure is entirely statutory. In these circumstances, I am satisfied that Mr. Bentley has discharged the *de facto* burden of proof and there is juristic reason to deny ADP's claim.

[287] In my view, the case at bar is easily distinguishable from *Canadian-Automatic*. This is not a case of a sophisticated commercial creditor seeking to skirt the limitations of the ESA scheme. Rather, this case involves a vulnerable, unsophisticated, financially dependent individual who was convinced to work for his uncle's closely-held company based on hollow promises of future payment. If the question is whether it is just and equitable to extend the law of unjust enrichment to include the particular situation before the court, then I would answer that question in the affirmative. Although there are compelling public policy reasons to uphold the principle of corporate responsibility, in this particular case it would not be just and equitable to do so. I conclude that there is no juristic reason for the benefit Shahbaz realized in having Sheeraz work as the general manager of his company's franchise operation, full-time, for over a year, without ever receiving any pay.

[288] Turning to remedy, I am satisfied that this is an appropriate case for an award based on value-received. This has been described as, "the amount the defendant would have had to pay for the services on a purely business basis to any other person doing the work that was

provided": Blake v. Wells, 2007 BCCA 617 at para. 72, citing Peter at p. 1025. On the basis that Sheeraz was to be paid \$25 per hour, and that he worked 40 hours per week for a total of 51 work weeks, and applying a marginal tax rate of 20%, I would value the gross benefit received at \$40,800. From this, I would deduct \$1,000 per month on account of living expenses covered by Shahbaz. In the result, I find that Shahbaz is liable to pay Sheeraz damages totalling \$28,800.

[289] Although Sheeraz and Ali argue that any award in their favour should be made jointly and severally against Nabeela and Shahbaz, I see no basis to make any order against Nabeela on account of Sheeraz's unjust enrichment claim for unpaid work at Maaco.

(6) Sheeraz and Ali's Claim for Punitive Damages

[290] Sheeraz and Ali claim punitive damages against Shahbaz, for his conduct in the course of the litigation. In the course of the trial, I considered and dismissed Sheeraz and Ali's request for an order holding Shahbaz in contempt for non-disclosure of documents. Accepting that Shahbaz was dilatory in meeting his obligation to produce documents, and that he never fully complied with the obligation under the Supreme Court Civil Rules, B.C. Reg. 168/2009 to produce all relevant documents, I am not satisfied that his behaviour in the course of the litigation rises to the level of "malicious" or "egregious" conduct warranting the exceptional remedy of punitive damages: Whiten v. Pilot Insurance Co., 2002 SCC 18 at paras. 36, 92, citing Hill v. Church of Scientology of Toronto, [1995] 2 S.C.R. 1130.

Conclusion

[291] I would summarize my conclusions and the resulting orders as follows:

- (a) Nabeela's claim against Sheeraz and Ali is allowed in part. Nabeela is entitled to a declaration that she is the beneficial owner of a one-half interest in the Maple Ridge townhouse, subject to the existing mortgage.
- (b) If the parties are unable to reach an agreement about how to give effect to this declaration, either party may schedule a further appearance before me, for an order under the Partition of Property Act, R.S.B.C. 1996, c. 347, or any other order that may be required.
- (c) Sheeraz and Ali's claim for occupation rent is allowed in part. Nabeela is ordered to pay \$9,000 in damages to Sheeraz and Ali for the unlawful exclusive occupation of the Maple Ridge townhouse.
- (d) Sheeraz and Ali's claim for conversion and unjust enrichment in connection with alleged unpaid work at Mucho Burrito Vancouver is dismissed.
- (e) Sheeraz's claim against Shahbaz for conversion of wages earned at Maaco is dismissed.

- (f) Sheeraz's claim against Shahbaz for unjust enrichment on account of unpaid work at Maaco is allowed in part. Shahbaz is ordered to pay \$28,800 in damages to Sheeraz.
- (g) Sheeraz and Ali's claim for punitive damages is dismissed.
- (h) All other claims in the notice of civil claim and counterclaim are dismissed.

Costs

[292] If the parties are unable to agree on costs, they can file supplementary submissions.

Nabeela and Shahbaz may file a submission of no more than five pages plus any supporting materials within 21 days of the release of this judgment. Sheeraz and Ali may file a responding submission of no more than five pages plus any supporting materials within 14 days of receipt of Nabeela and Shahbaz's submission. Nabeela and Shahbaz may file a reply submission of no more than two pages, plus any supporting materials within seven days of receipt of the submissions of the defendants. If any party takes the view that submissions on costs cannot effectively be dealt with in writing, that party may, within the time limits set out above, submit a request to Supreme Court Scheduling for a further appearance for viva voce submissions on costs.

"Riley J."

Appendix A

Occupation Rent Calculation

Period

Market Rent

Mortgage

Difference

Sheeraz and Ali's Share

Number of Months

Sub-Total

Jun 2019 - Aug 2019

\$1,620

\$1,500

\$120

\$60.00

3

\$180

Sep 2019 - Aug 2020

\$1,810

\$1,500

\$310

\$155.00

12

\$1,860

Sep 2020 - Aug 2021

\$1,870

\$1,550

\$320

\$160.00

12

\$1,920

Sep 2021 - Aug 2022

\$1,935

\$1,550

\$385

\$192.50

12

\$2,310

Sep 2022 - Aug 2023

\$1,995

\$1,605

\$390

\$195.00

12

\$2,340

Sep 2023 - Oct 2023

\$1,995

\$1,605

\$390

\$195.00

2

\$390

Total

\$9,000

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