

CANADA / JUDGMENT

Kaur v. Jammu

2025 BCSC 615

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2025 BCSC 615 Kaur v. Jammu

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Kaur v. Jammu,

2025 BCSC 615

Date: 20250403

Docket: E00768

Registry: Abbotsford

Between:

Harvir Kaur

Claimant

And

Gurvir Singh Jammu, Gurdev Singh Jammu, Gurdeep Kaur Jammu,

Jasvir Kaur Jhand, Baldev Singh Jhand and Bhupinder Kaur

Respondents

Before: The Honourable Justice Kirchner

Reasons for Judgment

Counsel for the Claimant:

S. Gadey

Counsel for the Respondents, Gurvir Singh Jammu, Gurdev Singh Jammu, and Gurdeep Kaur Jammu:

D. Hall

Counsel for the Respondents, Jasvir Kaur Jhand and Baldev Singh Jhand:

B. Sandhu

Place and Dates of Trial:

Port Coquitlam, B.C.

February 3, 2025

Abbotsford, B.C.

February 4-7, 10-14, 2025

Place and Date of Judgment:

Abbotsford, B.C.

April 3, 2025

Table of Contents

I. Introduction.. 4

II. Background.. 5

A. Prior to the Marriage. 5

B. The Marriage. 7

C. Superguard Security. 8

D. Separation. 10

III. Credibility. 11

IV. Findings about the Relationship. 12

A. Marriage-Like Relationship. 12

B. The Marriage. 13

C. Living in the Squamish Property. 16

D. Summary of Findings about the Relationship. 17

V. Findings about the Properties. 18

A. Overview.. 18

B. Gurvir's Income. 18

C. The Surrey Condo. 21

1. Source of Funds for the Surrey Condo. 21
2. Mortgage on Surrey Condo. 25
3. Unexplained \$30,000 Payment 26
- D. The Squamish Property. 28
 1. Loan from TD Bank. 29
 2. Other Contributions from Jasvir 32
 3. Baldev's Initial Contribution. 33
 4. Satnam Singh's Contribution. 33
 5. Mortgage on the Squamish Property. 33
 6. Conclusion on Purchase Price for the Squamish Property. 34
- E. Bhupinder Removed from Title to Both Properties. 35
- F. Conclusion on Contributions to the Properties. 36
- VI. Entitlement to the Properties. 36
 - A. Resulting Trust 36
 - B. Value of Gurvir's Interest in the Surrey Condo. 38
- VII. Spousal Support. 39
- VIII. Divorce. 40
- IX. Costs. 40

I. Introduction

- [1] At issue in this family law case is whether the claimant, Harvir Kaur, has any entitlement under the Family Law Act, S.B.C. 2011, c. 25 ("FLA") to property held in the name of the respondent, Gurvir Jammu. Harvir and Gurvir were married on March 3, 2020 and separated on April 4, 2021. Three months before their wedding ceremony, Gurvir's family bought a condominium on 102nd Avenue in Surrey (the "Surrey Condo") that was registered in Gurvir's name and rented out. Just over six months after the wedding ceremony, Gurvir's family bought a townhome in Squamish (the "Squamish Property") that was also registered in Gurvir's name. Harvir claims both are family properties and she is entitled to a one-half interest in each under s. 81 of the FLA. Alternatively, she seeks spousal support.

- [2] Specifically, Harvir argues the properties were bought with money Gurvir earned during a marriage-like relationship and the marriage itself. To the extent others contributed money to the properties, Harvir argues they were repaid by Gurvir during the relationship, except for \$775,064.82 which she acknowledges is owed to the respondent, Baldev Jhand.
- [3] Gurvir and the other respondents paint a vastly different picture. They claim Gurvir's parents, the respondents Jasvir Jhand and Gurdev Jammu, bought the Surrey Condo with their money and with loans and investments from friends and relatives. They claim the Surrey Condo was put in Gurvir's name to take advantage of first-time homebuyer's benefits. They claim the Squamish Property was bought with financing from mortgages taken out on the Surrey Condo, contributions from Jasvir, Gurdev, Baldev Jhand (Jasvir's brother), and their friend Satnam Singh, and a mortgage on the Squamish Property itself. They claim the Squamish Property was put in Gurvir's name for estate planning purposes. They argue Gurvir made no financial contribution to either property and he has never had an income that would enable him to do so. They argue Gurvir holds title to the two properties on a resulting trust for Jasvir, Gurdev, and Baldev.
- [4] The respondents also argue that Harvir and Gurvir's marriage is a "sham" done solely to facilitate Harvir's immigration status in Canada. They claim there was never a true relationship between Harvir and Gurvir beyond a friendship and they never lived together. They argue that since the marriage was for done solely to assist Harvir with her immigration status, she has no entitlement to an interest in either property.
- [5] Harvir acknowledges that her immigration status was one factor in deciding to marry Gurvir but says it was also a marriage that her and Gurvir's families both wanted. Although she was reluctant to marry Gurvir, she ultimately decided it was the best thing for her to do and she was determined to make the relationship work. She argues the marriage is legally valid and the reasons for it do not affect the legal issues of property division and spousal support.
- [6] Given that many of the parties share the same last name, I will refer them by their first names as counsel did at trial and I intend no disrespect in doing so.

II. Background

A. Prior to the Marriage

- [7] Harvir is 29 years old. She came to Canada from India in August 2015 on a student visa and studied Associated Arts at Columbia College and then Alexander College. She later studied tourism at Western Community College.
- [8] Gurvir is 28 years old and describes himself as a student. He has been studying criminology at Kwantlen University but was not taking courses at the time of trial. He last attended in the fall semester of 2024 and said he intends to return. He works part time as a security guard and hopes to pursue a career in law enforcement. He currently lives with his parents, as he always has, who support him.

- [9] Harvir and Gurvir first met in 2016 when Harvir and her brother went to eat at a restaurant owned by Gurvir's family. Harvir and her brother returned to the restaurant several times and came to know Gurvir and his parents, Jasvir and Gurdev, all of whom worked at the restaurant.
- [10] From this point, the parties evidence diverges markedly. I propose to summarize the parties' competing evidence on material points and will later set out my findings of fact.
- [11] Harvir testified that Jasvir offered her a job in the restaurant which she accepted. She said the family paid her in cash and allowed her to live in their home rent free, although she had to work in the home as well as the restaurant. She said she was paid \$1,200 per month but \$300 was deducted from this for taxes. She said since she was new to Canada, she did not know about minimum wage laws or other legal protections for workers so she went along with this. Once she learned this was not lawful and she could make more money with greater freedoms elsewhere, she left the home and moved in with some friends.
- [12] Gurvir, Jasvir, and Gurdev deny that Harvir ever worked in the restaurant or lived in their house. They testified that Harvir's brother, who came to be close friends with Gurvir, moved into their house while he was going to school and Harvir would come to the house from time to time to visit him. They said she stayed overnight on a couple of occasions but never lived there.
- [13] As there is no allegation of a marriage-like relationship prior to January 2019, I find it unnecessary to resolve this stark factual disagreement as it relates to 2016. It is curious, though, that neither party called Harvir's brother as a witness even though he seems to be the one person who might speak independently about these events.
- [14] In 2017 Harvir got married but that turned out to be an abusive relationship which she left in 2018. A divorce was granted in July 2019. When she left the relationship, she initially lived with friends but said Gurvir suggested she move back into his family's house. She said Gurvir told her that his family missed her and wanted her to move back. She also said her own family in India, whom she said had come to know Gurvir's family, pressured her to move back to the Jammu/Jhand household. She said she did so in late 2018 or early 2019.
- [15] Gurvir, Jasvir, and Gurdev denied that Harvir moved into their house in 2018, 2019, or at all, or that they urged her to do so. They maintained that Harvir's brother continued to live in their home until sometime in 2019 when he finished school and moved to Agassiz to take a job working in a restaurant franchise owned by one of Gurdev's friends.

B. The Marriage

- [16] Harvir testified that when she moved back into the Jammu/Jhand home, she initially shared a room with Gurvir's grandmother. However, she said she and Gurvir soon began dating and developed a physical relationship. She said she started sleeping in Gurvir's room and they were living in a marriage-like relationship starting in January 2019. As I discuss later, that contradicts her discovery evidence where she was clear there was no physical relationship as of June 2019.
- [17] Harvir testified that in July 2019, when she was formally divorcing her previous husband, her and Gurvir's families started pressuring her to marry Gurvir but she was opposed. Harvir said the two families urged on her that it would be good for her future to marry Gurvir in that it would help secure her residency in Canada. She said by March 2020 she decided that marrying Gurvir was the best thing for her to do to secure her own future and make the two families happy. She said despite her reluctance she was determined to make the marriage work. They married in a small ceremony on March 3, 2020. Gurvir would later sponsor Harvir's immigration application.
- [18] Again, Gurvir, Jasvir, and Gurdev deny all of this, except for the marriage itself and the immigration application. They testified that Gurvir and Harvir were friends with a sibling-like relationship that never developed further. They maintained she never lived in their home before or after the marriage but Gurvir was willing to marry Harvir as a favour and an act of friendship to help secure her residency in Canada. They said it was never a true marriage. Jasvir and Gurdev claimed they did not learn of the idea of the marriage until days before the ceremony and they counselled Gurvir against it, although they both attended the ceremony.
- [19] Gurvir, Jasvir, and Gurdev testified that even after the wedding ceremony Harvir never moved into their home, maintaining she only stayed there for a couple of nights here or there. Gurvir testified she stayed at the house for maybe two days before the marriage ceremony but did not return afterwards. As I discuss later, this is contradicted by an affidavit Gurvir swore earlier in this proceeding.
- [20] Harvir testified that throughout the marriage, Gurvir and his family were abusive and controlling towards her. She said she was required to cook meals for the family as well as work in the family's security business. She said one of Gurvir's relatives hit her on the head at one point but Gurvir and his parents were dismissive of this. She also said Gurvir's family frequently complained to Harvir's family in India that Harvir was not pulling her weight in the Jammu/Jhand family or doing the work that was expected of her.
- [21] The respondents deny all this. They admit that they met Harvir's family when they were on a trip to India but claim this was at the request of Harvir's grandfather and had nothing to do with Harvir and Gurvir being married.

- [22] In June 2020, Harvir submitted an application for permanent residency in Canada (the "Immigration Application"). Gurvir sponsored her application as her spouse. This application was pending at the time she and Gurvir separated.

C. Superguard Security

- [23] In the fall of 2019, Gurdev and Gurvir established a security company called Superguard Security. It was formally incorporated on October 30, 2019. Gurdev and Gurvir are directors of the company. Both claim Gurvir is not and never has been a shareholder but in his April 26, 2023 affidavit Gurvir deposed he is a director and shareholder. The share certificates for the company were not produced or at least not tendered in evidence.
- [24] Harvir testified that she helped set up Superguard, claiming that she and Gurvir completed most of the corporate registration documents. However, when asked in direct examination who registered the company, she could not remember how that was done. She also could not say which banks the company had accounts with or when those accounts were set up. She said Gurvir dealt with all the financial matters for the company.
- [25] Harvir claimed that she worked for Superguard once it started. She said she was not paid for this work because Gurvir's family insisted that she would benefit as Gurvir's spouse from working in the family business. She claimed the family members would drop her at the work site and she would usually work alongside Jasvir or Gurvir. She said she was required to walk hourly rounds at job site and prepare reports which were submitted to the contractor that hired Superguard. She said she also had to take pictures of the site and send those the contractor. She claimed she had no phone of her own at the time because Gurvir's family would not allow her to have one. When she worked at a Superguard site she was given Jasvir's or Gurvir's phone to use for the job.
- [26] Harvir said she initially worked at a site in Coquitlam but later she and Gurvir worked at a site in Squamish. She said the Squamish Property was bought so they could work at the Squamish site without commuting from Surrey every day. She had no direct involvement in the purchase of the Squamish Property but said she learned from conversations in the family that this is why it was purchased. She claimed she and Gurvir lived at the Squamish Property after it was purchased in October 2020.
- [27] Gurvir, Jasvir, and Gurdev denied that Harvir ever worked for Superguard. They also denied that Harvir had no phone of her own at the time. They pointed to some undated text messages that they claimed she sent to Gurvir in which she referred to him as "bro". They argue this not only indicates she had her own cell phone but also that she had a friendly but not spousal relationship with Gurvir. They also denied that Harvir (or Gurvir) ever lived at the Squamish Property. Gurdev testified that he was working a security job in Squamish and he lived in the property for a time while doing so.

D. Separation

- [28] Harvir testified that on the night of April 4, 2021, she was sitting in the living room watching T.V. after washing the family's dinner dishes. She said Gurdev called her grandfather in India and told him that Harvir was not being obedient. She claimed Gurdev was drunk at the time. She said Gurdev wanted her to speak to her grandfather but she told him that she did not want to. She said Gurdev then grabbed her by the wrist and forced her to the ground. She said he told her words to the effect of "I've fixed so many women and I'll fix you too." She said Gurvir did not intercede in this. She said she was screaming and her family members who were still on the phone from India were not supporting her. She said she went to her room, locked the door, and called the police who attended around 15 minutes later.
- [29] Gurdev denied all this. He agreed that Harvir was at their house that night and claimed she had come over about two days before with two bags of belongings and had stayed in the house for a night or two. He said they were watching T.V. in the evening when Harvir's grandfather called her. He said Harvir became angry during the conversation and went to her room. He said the police attended about half an hour later but he had been unaware that she called them. He denied having any dispute or altercation with her.
- [30] Gurvir said he was not aware of anything that happened that caused Harvir to call the police. He said that to his knowledge there was no incident and it was a very calm evening. However, this is inconsistent with evidence Gurvir gave in his April 26, 2023 affidavit in which he said:

It is my recollection that on or about April 4, 2021, the claimant had a heated conversation with her grandfather by video. My father objected to the way the claimant spoke to her grandfather and told her she should be more respectful. The claimant went upstairs and either called or had some outside our house call the police.

- [31] Gurvir said he was not aware the police had been called until he answered the door when they arrived. He testified the police asked for Harvir and he told them she is "upstairs in her room". That evidence was given in an unguarded moment and I find it significant that he said she was in "her" room yet claimed in his testimony that she was not living in the house at the time and had only ever stayed there for a couple of nights before the wedding ceremony. Gurvir added that he believed the police told her to "pack her things". Again, it seems unlikely she would have things to pack if she was not staying at the house.
- [32] The police came to the bedroom door and escorted Harvir out of the house. She returned a day or two later with a police escort to collect her remaining belongings. She was later settled in a transition house.

- [33] After she left the house on April 4, 2021, Harvir received a series of text messages from Gurdev wishing her well on her "independent decision" and asking if she was safe in her "new place". On April 12, 2021 Gurdev sent her a Happy Baisakhi message and on April 13 he sent a message that simply said "Hello Nikki" (which is what Gurvir's family called her). On April 17, 2021, Harvir blocked Gurdev from contacting her.
- [34] As a result of this separation, Harvir could no longer rely on Gurvir's sponsorship of her Immigration Application. She therefore resubmitted an application for permanent residency but now based it on humanitarian and compassionate grounds (the "Compassionate Grounds Application"). That application was eventually accepted.

III. Credibility

- [35] The evidence about the parties' relationship largely comes down to credibility. Credibility refers to the truthfulness of a witness' testimony whereas reliability concerns its accuracy: *Ford v. Lin*, 2022 BCCA 179 at para. 104. Here credibility is the issue.
- [36] As stated in *Brandshaw v. Stenner*, 2010 BCSC 1398 at para. 186, *aff'd* 2012 BCCA 296, the assessment of credibility involves examination of various factors such as the ability of a witness to resist the influence to modify their recollection, whether their evidence harmonizes with independent evidence, whether the witness changes their evidence during direct and cross-examination, whether their evidence seems unreasonable, impossible, or unlikely, and whether they had a motive to lie. In *Gichuru. v. Smith*, 2013 BCSC 895 at para. 130, Justice Adair observed:
- [130] the assessment of a witness's credibility must reasonably subject the witness's story to an examination of its consistency with the probabilities of the surrounding conditions or circumstances. The real test of the truth of the story of a witness in such a case must be its 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.
- [37] In this case, I have concerns about the credibility of the evidence given by all the principal witnesses to the relationship (Harvir, Gurvir, Gurdev, and Jasvir). Due to these concerns, I find I must be cautious in considering their testimony about the acquisition of the two properties. Where possible, I will look to documentary evidence to make my findings of fact, particularly with respect to the properties.

IV. Findings about the Relationship

A. Marriage-Like Relationship

- [38] I find that Harvir and Gurvir were not in a marriage-like relationship before the March 3, 2020 wedding ceremony. Harvir's own evidence was that they were "dating" and "going out a lot" before they were married. These are not characteristics of a marriage-like relationship. She also testified that she was reluctant to marry Gurvir right up to March 2020. In her

Compassionate Grounds Application, she stated that Gurvir's family first began suggesting that she marry Gurvir when her visitor's visa was set to expire but she "outright refused". The visitor's visa did not expire until November 1, 2019. The fact she was determined not to marry Gurvir as of November 1, 2019 and still unsure about it up to March 2020 undermines her suggestion that she and Gurvir were already in a marriage-like relationship before March 2020.

- [39] Further, Harvir's evidence at trial that she and Gurvir were in a physical relationship as of January 2019 is contradicted by her examination for discovery evidence where she was clear that they were not in a physical relationship in June 2019. That contradiction undermines the credibility of her evidence on this point.

B. The Marriage

- [40] I am not persuaded that the March 3, 2020 marriage was a "sham" and done only for immigration purposes. I find that the immigration issue was likely one of the reasons for the marriage and may well have even been the principal reason. However, that does not make the marriage invalid or negate its legal consequences. As Justice Dorgan held in *Rose v. Guiguet*, 2008 BCSC 1225 at para. 60, "if a party marries for the purposes of immigration, the marriage may still be deemed valid". She added that ulterior motives to marry are irrelevant to determining if the marriage is valid and went on to say:
- [63] The fact that rights and responsibilities flow from a legally-binding marriage, which there is in this case, is thus not impacted by either party's motive for marrying for immigration purposes, or the quality of the marriage. I find that the parties' marriage gives rise to legal rights and responsibilities in this case.
- [41] That is not to say that I find Harvir's evidence about the marriage entirely convincing. She said it was a small wedding because of there were COVID restrictions on gatherings but that is not credible since the date of the ceremony (March 3, 2020) predated those restrictions. She also gave this explanation for the small wedding in her Immigration Application which leads me to conclude that she felt it necessary to persuade Citizen and Immigration Canada officials of the legitimacy of the marriage. Further, there is no evidence that a larger wedding had been planned before the pandemic loomed. When Harvir was confronted about the date for COVID restrictions in cross-examination, her explanation for a small wedding shifted to financial reasons. This change in her evidence further diminished her credibility on this point.
- [42] However, Gurvir, Jasvir, and Gurdev's credibility on this issue is also questionable. The fact that Jasvir and Gurdev attended the ceremony that they now call a "sham" undermines their evidence that they were firmly opposed to the idea. Moreover, their evidence that they only learned of the marriage idea a day or two before the ceremony is contradicted by Gurvir's evidence that Harvir and her brother raised the marriage idea in 2019. Gurvir said once that idea came up in 2019, his parents started having conversations with Harvir's family in India.

[43] I need not make any findings about a physical relationship after Harvir and Gurvir were married or what room she was sleeping in. There is no application before me to annul the marriage on any grounds. The fact is they were married in a ceremony attended by Gurvir's parents and, as I find next, that she lived in their home after the ceremony until April 4, 2021. That is enough to satisfy me that this was a legal marriage that gives rise to legal rights and responsibilities.

[44] I find that Harvir was living in the Jammu/Jhand family home when she called the police and probably since the March 3, 2020 wedding ceremony. I prefer Harvir's evidence on this point largely because Gurvir's evidence is flatly contradicted by his own affidavit sworn earlier in these proceeding. In that affidavit, dated April 26, 2023, Gurvir stated:

The claimant and I entered a suppositional marriage at Surrey, B.C., on March 3, 2020. We lived in my family home at 13115 110th Avenue, Surrey, B.C., and separated on April 4, 2021. We did not consummate our relationship and during our cohabitation maintained separate sleeping quarters.

[Emphasis added]

[45] When confronted with this affidavit in cross-examination, Gurvir said it was "based on a technicality" and "wasn't factual". He gave an incoherent explanation for the statements in the affidavit and ultimately said he did not understand what it said. This attempt to explain away a previous sworn statement further undermines Gurvir's credibility.

[46] The contradiction in Gurvir's evidence at trial with his previous sworn statement is too substantial to disregard. I find Gurvir's evidence that Harvir did not live in the home after the marriage ceremony is not credible.

[47] Gurvir also brought a separate proceeding in which he sought to annul the marriage. Notably, he did not suggest in that proceeding that the marriage was a sham done for immigration purpose. Rather, he claimed Harvir had earlier married another person in India and they had never divorced. Harvir confirmed that she had been engaged in India but denied there was a marriage and said the engagement broke off when she decided to go to Canada. The issue was canvassed in a 2023 application that Harvir brought in this proceeding for a declaration that her marriage to Gurvir was valid. Justice Duncan granted that declaration in an order dated May 8, 2023.

[48] I also find that that Gurdev's denial that Harvir lived in the home lacks credibility. The content of the text messages he sent Harvir after the April 4, 2021 incident unmistakably imply that she had been living in the home and had chosen to leave. The first message came on April 5, 2021, the day after the incident:

Good Morning, if you happy and safe that's all we hope, good luck for your independent decision.

[49] Harvir did not respond to this message. Gurdev sent another message on April 7, 2021:

?

Are you safe and fine at your new place.

[Emphasis added]

[50] Again, Harvir did not respond. On April 10, 2021, after Harvir had come back to the home with police to collect her things, Gurdev messaged her again as follows:

Hello did you took everything? If something still left let me know, I will search it pack it and will place outside in sunny day for your pick up. Need not to afraid of us and no need for police escorts. We are not mad on you, everyone has freedom of decision and freedom of life to where and with whom to live. Our concerns are just your safety.

[Emphasis added]

[51] In my view, these messages are consistent with Harvir's evidence that she was living in the home at least at the time of the April 4, 2021 incident.

[52] As I find Gurvir and Gurdev's evidence on this point not credible, I prefer Harvir's evidence as to the events of April 4, 2021 and how the separation came about. I am also reinforced in this conclusion by the inconsistency between Gurvir's evidence at trial and his April 26, 2023 affidavit as discussed earlier at para. 30.

[53] Finally on this point, it makes no sense for Harvir to have called the police and severed her relationship with Gurvir and his family for no reason while her Immigration Application was still pending. If she was living her own life outside of the home while maintaining a performative marriage to Gurvir to support her application, there would be no reason to disrupt that and risk her immigration status.

C. Living in the Squamish Property

[54] However, I do not accept Harvir's evidence that she and Gurvir lived at the Squamish Property after it was purchased. I find her credibility on these points is undermined by other evidence, including her Compassionate Grounds Application in which she described driving from Surrey to Squamish "on a few occasions" without ever stating that she lived or stayed there. She added in the application that even after working a full day shift in Squamish she was expected to wake up early and make breakfast for the Jammu/Jhand family which, if true, is inconsistent with her living at the Squamish Property. Harvir was also vague about the work she said she did for Superguard, particularly at Squamish. When asked in cross examination to describe the sites she worked at, she gave very general descriptions. For example, she described the Squamish site in vague terms, simply saying it was a construction site.

[55] I also find that an employment history document that Harvir certified and submitted with her Immigration Application undermines the credibility of her evidence about working at Superguard. That document states that she was working as a cashier at Petro Canada from June 2018 to June 2020. She signed that document on June 6, 2020 which suggests she was still working at Petro Canada at the time. The document includes a "Declaration of the Applicant" immediately above the signature line that reads:

I understand that misrepresentation is an offence under section 127 of the Immigration and Refugee Protection Act and may result in a finding of inadmissibility to Canada or removal from Canada.

I find it is unlikely that Harvir would have risked her immigration application by falsely stating her employment status and history in the application.

[56] Harvir's certification in this document is also inconsistent with her evidence that she worked at Superguard under compulsion of Gurvir's family. When confronted with this document in cross-examination she maintained that she had not worked at Petro Canada at all in 2020 and suggested that the application presented to her in cross examination may be a draft. It was not. That copy of the application was obtained by Harvir herself (or by her counsel) from Citizenship and Immigration Canada.

[57] Harvir's credibility on these points is further undermined by her testimony that she had no cell phone because Gurdev and Jasvir would not allow her to have one. However, she said in her Compassionate Grounds Application that she would send Snapchat messages to her family in India while at work. She does not explain how she would do this without a phone. Moreover, she had a phone when she called police from the Jammu/Jhand house on April 4, 2021 and received messages on that phone the next day from Gurdev. She also gave two different cell phone numbers in her Immigration Application and did not state in the application that these numbers belonged to Gurvir or Jasvir. In my view, these points undermine Harvir's credibility more generally as it relates to what she was doing following the marriage.

D. Summary of Findings about the Relationship

[58] In summary, I find Harvir and Gurvir were not living in a marriage-like relationship before March 4, 2020. I find their marriage was likely driven by Harvir's immigration status but I am not persuaded it was a "sham" as suggested by the respondents and, in any event, legal rights and obligations flow from the marriage regardless of its purpose. I find on a balance of probabilities that Harvir was living in the Jammu/Jhand home after the marriage and stayed there until the April 4, 2021 incident that led to the separation. I am not persuaded that she was working for Superguard or that she and Gurvir lived in the Squamish Property.

V. Findings about the Properties

A. Overview

- [59] The evidence documenting the acquisition of the two properties is far from perfect. No agreements of purchase and sale and no mortgage documents have been produced. There are some bank records, such as bank drafts and account statements, but these are incomplete. The respondents have offered no good explanation for their failure to produce all relevant documents. When confronted in cross-examination about this, the respondents (and Jasvir in particular) asserted that all documents the claimant sought had been produced. That is patently untrue and, in any event, it is the respondents' obligation to produce documents that may tend to prove or disprove a fact in issue. It is not for the claimant to chase down the documents that fall within the scope of this required production. The mortgage documents and bank statements are clearly relevant to this litigation and should have been produced.
- [60] Despite this, I am satisfied on a balance of probabilities that both properties were purchased using Jasvir and Gurdev's money and money invested in the properties or loaned to Jasvir by others. I am also satisfied on a balance of probabilities that, to the extent these loans or investments have been repaid, it was not with money Gurvir earned during the parties' relationship, save for one payment the respondents have failed to explain.
- [61] I reach this conclusion based on the evidence of Gurvir's income before and during the relationship and the documentary evidence (incomplete though it is) relating to the purchase and mortgage of the two properties. To the extent that I rely on the testimony of the parties, I largely do so only where it is supported by other documentary evidence.

B. Gurvir's Income

- [62] I find that Gurvir lacked the income and the capacity to borrow money during the marriage that he would have needed to buy or substantially contribute to the properties. Gurvir describes himself as a student. His financial statement states that he was unemployed and being supported by his parents when it was sworn in January 2025. His tax returns for the last five years report annual income of \$2,104 (2023), \$19,741 (2022), \$18,906 (2021), \$37,199 (2020), and \$14,335 (2019). His income appears to be a mix of employment income working for Superguard Security or Commissioners Security. He claimed he was not doing specific shifts at Superguard but helped out when Gurdev needed some assistance. He described the payments he received from Superguard as an "allowance" rather than a salary, although he was issued a T-4 for this income.
- [63] Harvir argues that Gurvir has underreported his income and that he drew additional undeclared income from Superguard. She points to poorly explained deposits and e-transfers to Gurvir's bank account, such as a \$900 e-transfer from "gurkormal" on June 16, 2020 and a \$1,200 e-transfer from "Anmol" on July 2, 2020. These are just two examples. Gurvir testified this was money from friends but could not explain why these friends were giving him money. He speculated that it may have been reimbursements for items he bought

on behalf of an organization he volunteers for. He said the same thing about \$1,200 e-transfers to his account on August 3, 2020, September 17, 2020, October 5, 2020, and November 5, 2020. He admits that some deposits, such as \$1,500 deposits on September 15, 2020, and October 9, 2020 were rental payments for the Surrey Condo.

- [64] Gurvir's evidence about these deposits is not credible. He struggled to explain the \$1,200 payments that appear to have been monthly for some period of time and the overall lack of disclosure of his bank statements only leads to further suspicion about his evidence on this point.
- [65] As I discuss in more detail below, there were also much larger sums of money moving in and out of Gurvir's RBC account in connection with the purchase of the two properties but, as I will explain, I am satisfied most of this money came from loans or transfers from other accounts rather than money Gurvir earned or received from Superguard or other sources.
- [66] I note also that Jasvir testified Gurvir's RBC account was a joint account that Gurvir held with her but her name was only added to the account in September 2020.
- [67] Despite finding Gurvir is not a credible witness in explaining deposits to his account or his income more generally, I am not able to conclude that he earned anything close to an income that would allow him to buy either the Surrey Condo or the Squamish Property. He had neither the cash nor the capacity to borrow money to buy these two properties or reimburse others for their contributions. Looking at the few months of bank statements that were produced for 2019 and 2020, and even assuming the poorly-explained deposits were income to Gurvir, they simply do not add up to an amount that would enable him to buy or pay off these properties.
- [68] Moreover, even if Gurvir had an equity interest in Superguard from which he might have drawn unreported income, that company was only incorporated at the end of October 2019 which less than two months before the Surrey Condo was purchased. Supergard's financial statements are not in evidence (and I am not clear on whether they were produced) but I find it very unlikely that a start-up family security company could turn enough of a profit in its first year of operation to fully pay off the purchase of a \$330,000 condominium.
- [69] Thus, while I find Gurvir's evidence about the money coming into his account lacks credibility, I am not persuaded there is any reality to Harvir's suggestion that Gurvir earned enough money on his own during their short marriage to make a material contribution to the purchase of the two properties, let alone pay or repay the full amount of either property, less the \$775,064.82 owed to Baldev.
- [70] With that conclusion in mind, I turn to tracking the source of the funds used to buy these properties and repay debts to others for them. That evidence, flawed though it is due to the shortcomings in the respondents' document production, satisfies me that Gurvir did not purchase either of these properties or reimburse others for them from money he earned during the parties' relationship, save for one unexplained transaction.

C. The Surrey Condo

[71] The Surrey Condo was bought on December 19, 2019 for \$330,000 without a mortgage. It was registered in Gurvir's name. The respondents claim this was done to take advantage of first-time homebuyer benefits but maintain the beneficial interest in the property belongs to Jasvir and Gurdev. Since Harvir argues that the condo was bought with Gurvir's money or that his money was used to repay others for their contributions to purchase of the condo, I will track the sources of the funds used to buy it and then track payments to others that might relate to it. As these transactions are pieced together with many different documents tendered in a somewhat disparate order, I will refer to exhibit numbers so the parties can follow the evidentiary path that leads to my conclusion.

1. Source of Funds for the Surrey Condo

[72] I start with a \$15,000 deposit that was put down for the Surrey Condo on September 13, 2019. That was paid by a bank draft to Royal LePage Northstar Realty drawn from Jasvir's account at the Bank of Montreal [Ex. 8 Tab 12]. Jasvir traces the origins of this \$15,000 to a withdrawal from her and Gurdev's joint account at Khalsa Credit Union on August 17, 2019 [Ex. 8 Tab 14, p. 2]. The evidence shows that withdrawal but does not show a corresponding deposit to the Bank of Montreal account. Nevertheless, there is no evidence that Gurvir paid the \$15,000 and, despite the shortcomings in the explanation, I accept this deposit was paid by Jasvir.

[73] The balance of the purchase price for the Surrey Condo came from a bank draft dated December 19, 2019 in the amount of \$316,316.18 payable to Rajdeep Notary Public [Ex. 8 Tab 3]. It is not disputed that this notary handled the conveyance. This draft was drawn from Jasvir's Khalsa Credit Union account as shown on her statement [Ex.8, Tab 45, pp. 5-6]. Jasvir traces the origins of this \$316,316.18 to \$180,828 that she earned from another property transaction and \$131,000 that she borrowed from friends and family to buy the condo. I will address each of these sources in turn.

[74] The evidence of the \$180,828 is as follows:

- a) On March 10, 2018, Bhupinder Kaur, who is Jasvir and Gurdev's friend, received a cheque for \$190,741.94 from a Surrey law firm [Ex. 8 Tab 20]. The memo note on the cheque states "Sale Proceeds". Bhupinder testified this was money received from a 2018 sale of another property owned by Jasvir and Gurdev and she accordingly forwarded the money to them. I heard almost no evidence about this other property or why Bhupinder was involved in the transaction but this evidence was not challenged and there is no evidence linking this \$190,741 to Gurvir.
- b) Jasvir then put the \$190,000 in a one-year cashable term deposit with Khalsa Credit Union that matured on April 3, 2019 [Ex. 8 Tab 2]. That evidence confirms Jasvir had \$190,000 in the Khalsa Credit Union account since at least April 2018, which is consistent with having received this money from Bhupinder in or about March 2018. I accept that this \$190,000 is

Jasvir and Gurdev's money received from Bhupinder. Further, I am given no reason to believe it might be Gurvir's and, in any even, this money came into the family two years before the marriage.

- c) On April 29, 2019, after the term deposit matured, \$180,000 was deposited into Jasvir's Khalsa Credit Union chequing account [Ex. 8 Tab 14 p. 12]. I infer this came from the matured \$190,000 term deposit, although I do not know what happened to the other \$10,000.
 - d) On September 14, 2019, \$180,000 was withdrawn from the Khalsa Credit Union account and evidently transferred to another Khalsa account [Ex. 8 Tab 14 p. 2]. The account entry states, "Descriptive Withdrawal trsf t (180,000.00)". I infer that "trsf t" refers to a transfer to another Khalsa Credit Union account, likely another term deposit, as I explain next.
 - e) On December 19, 2019, the day the Surrey Condo purchase closed, \$180,828.49 was deposited back into the Khalsa Credit Union Account with the description "Descriptive Deposit closeou w" [Ex. 8 Tab 14, p. 9]. A transaction slip for the same day refers to a closeout from a cashable term deposit in this same amount in the name of Jasvir, Gurdev and Gurbachan Jhand (Jasvir's mother) [Ex. 8 Tab 4]. I infer from this that the cashable term deposit was cashed in to go towards the purchase of the Surrey Condo.
 - f) On the same day, the \$316,316 draft was drawn from the Khalsa Credit Union account.
- [75] I am satisfied from this transaction history that \$180,828 of the \$316,316 came from the money Jasvir and Gurdev earned from the sale of another property in March 2018 and is unrelated to Gurvir.
- [76] That leaves another \$136,000 to be explained. Jasvir testified that \$131,000 of this came from money she borrowed from family or friends as supported by the following documents:
- a) On December 19, 2019, a \$15,000 cheque was deposited to Jasvir's Khalsa Credit account as shown on the account statement and on a deposit slip [Ex. 8, Tab 14, p. 9 and Tab 27]. Satnam Singh, who is Jasvir and Gurdev's close friend, testified that he loaned Jasvir this money to complete the transaction.
 - b) Also on December 19, 2019, four deposits totalling \$116,000 were made to the Khalsa Credit Union account. A deposit slip shows four cheques in the amounts of \$52,000, \$30,000, \$20,000, and \$14,000 were deposited [Ex. 8 Tab 5]. This is confirmed on the account statement [Ex. 8 Tab 14 p. 9]. Jasvir testified that all four cheques came from different friends or family members who loaned her the money to buy the Surrey Condo. In particular:
 - i. The \$52,000 cheque, while not in evidence, shows as having been drawn from Gurvir's Royal Bank Account on December 19, 2019 [Ex. 6 Tab 7 p. 41]. The day before, \$50,000 was transferred into that account from a branch-to-branch transfer. Jasvir testified that her sister in Toronto transferred the \$50,000 into the account as a loan to Jasvir. I accept this evidence, or at least I accept that the \$50,000 was not Gurvir's money as I can think of nothing Gurvir

would have done at the time to have earned that amount of money in a single payment. As I have said, Superguard Security had only been incorporated for less than two months and it is highly improbable it could have earned that much money in the short period of time. Moreover, this is still almost three months before the wedding and I have found that the parties were not living in a marriage-like relationship before then.

ii. The \$30,000 cheque is not in evidence but a TD Bank transaction slip for December 19, 2019 shows a \$30,000 bank draft payable to Jasvir drawn from a TD account [Ex. 8 Tab 8]. The evidence does not explain the source of this money, other than Jasvir's testimony that it was loaned to her by a friend, but nor is there evidence to suggest it came from Gurvir.

iii. There is no further documentary evidence explaining the \$20,000 or the \$14,000 cheques, other than Jasvir's evidence that the money was loaned to her by friends or family. Again, though, there is no evidence suggesting Gurvir was the source for this money.

[77] Thus, despite shortcomings in this evidence, I am satisfied the \$131,000 was loaned or otherwise provided to Jasvir and Gurdev by friends or family for the purchase of the property. Further, as I describe below, I find that at least some of this money was repaid with money later borrowed against the Surrey Condo.

[78] For these reasons, I am satisfied the \$180,828 was Jasvir and Gurdev's money from an earlier land transaction and the \$131,000 more likely than not was loaned to Jasvir by friends or family. I am persuaded that none of this money can be traced to Gurvir. This totals \$311,828 which is close to the \$316,316 used to complete the purchase the Surrey Condo. While approximately \$5,000 remains unexplained, I find nothing turns on this since there is no evidence it came from Gurvir and, regardless, the parties were not in a marriage-like relationship when the property was purchased.

[79] I am therefore satisfied that the money used to buy the Surrey Condo came from Jasvir and Gurdev in the form of their own money or money they borrowed from friends or family. I am satisfied Gurvir made no financial contribution to the property, with one exception I will discuss in a moment.

[80] However, this does not end the matter because Harvir claims that Gurvir paid all this money back to Jasvir, Gurdev, and the friends and family from whom money was borrowed. I turn to that next.

2. Mortgage on Surrey Condo

[81] In June 2020, a mortgage was taken out on the Surrey Condo. The mortgage documents have not been produced but a title search for the Surrey Condo shows a mortgage in favour of the TD Bank was registered against the property on June 19, 2020 [Ex. 6, Tab 10, p. 61]. Also on June 19, 2020, \$197,893.55 was deposited into Gurvir's Royal Bank account. The account statement identifies it as "Br to Br" which I take to be a branch-to-branch transfer.

- [82] Jasvir testified that these were the proceeds of a \$200,000 TD Bank mortgage taken out against the Surrey Condo on June 19, 2020. She said the \$197,893 were the net proceeds after the notary deducted its fees. The timing of the transfer into Gurvir's account matches the registration of a TD Mortgage on the Surrey Condo title but there is no documentary evidence specifically tracing this branch-to-branch transfer to the TD Bank. In fact, "Br to Br" suggests this money was transferred from another Royal Bank account but there is no evidence of what account it was transferred from.
- [83] I agree with Harvir that the lack of disclosure around the June 19, 2020 mortgage on the Surrey Condo clouds this issue. I can think of no reason why Jasvir would not have produced the mortgage documents. In the absence of those documents, Jasvir's evidence is supported only by a potential inference that the \$197,893 deposit into Gurvir's account on June 19, 2020 are funds derived from the mortgage that was registered against the title of the Surrey Condo that same day. That inference is open to be made on proven facts (the title search and the bank statement) but the absence of the mortgage documents and related bank statements leaves some uncertainty. Fault for that lies squarely with Gurvir, Jasvir, and Gurdev.
- [84] Counsel for Harvir makes a fair point in suggesting the Court should draw an adverse inference from this lack of disclosure. At the end of the day, however, even if I drew that inference, it would not be enough to overcome the fact that there is nothing to suggest that Gurvir earned or was capable of borrowing anything close to this kind of money, absent taking out a mortgage on the Surrey Condo that was registered in his name. I am satisfied on a balance of probabilities that the source of the \$197,893 deposit was a TD Bank mortgage on the Surrey Condo registered against the title on the same day as the deposit. As I discuss below, most of this money was invested in the Squamish Property but some was used to pay back a loan from Jasvir's sister to buy the Surrey Condo.

3. Unexplained \$30,000 Payment

- [85] Immediately before this \$197,893 was deposited to Gurvir's RBC account on June 19, 2020, the account had a positive balance of \$34,233. The account balance as of March 12, 2020 (shortly after the wedding) was only \$2,237.50. That means that some \$30,000 was deposited to the account between March 12 and June 15 2020 but there are no account statements for this period and no evidence explaining where this \$30,000 came from. On June 24, 2020, \$30,000 was withdrawn from Gurvir's RBC account in a branch-to-branch transfer and on June 30, 2024 another \$55,000 was withdrawn in a branch-to-branch transfer. Jasvir testified that these were repayments to friends or family for the money loaned to her to buy the Surrey Condo.
- [86] The \$30,000 matches the amount of one of the four cheques received on December 19, 2019 and used to buy the Surrey Condo. It also equals the amount of the unexplained deposit of \$30,000 (or perhaps several deposits totalling \$30,000) into Gurvir's RBC account between March 12 and June 15, 2020. The \$55,000 withdrawal could match the \$52,000 deposited to

Gurvir's account on December 19, 2019 with the additional \$3,000 explained as interest (although Jasvir did not say this in her evidence). I accept that these two withdrawals were to repay money borrowed from friends or family to buy the Surrey Condo.

- [87] I find that the \$30,000 that was sitting in the account as of June 19, 2020 was used to repay the \$30,000 loan. Repayment for the \$52,000 loan (plus \$3,000) came from the \$197,893.55 in TD Bank mortgage funds borrowed against the Surrey Condo.
- [88] All of the other transactions on Gurvir's RBC account are minor and none suggest that he had any significant income in 2019 or 2020 that would permit him to pay back others for the purchase price of the Surrey Condo. I am therefore satisfied, with the exception of the \$30,000 repayment, that Gurvir did not pay for the Surrey Condo.
- [89] With respect to the \$30,000, there is little evidence to suggest that Gurvir was capable of earning that amount of money in a three-month period between March 12 and June 15, 2020, although I note that his income in that year was higher than any other year and exceeded \$30,000. However, the fact is this money was deposited to Gurvir's account while he was married to Harvir. It falls to the respondents to show that this money is not Gurvir's and thus is not family property but they have offered no evidence to explain its source and they have failed to produce documents that might relate to it. I am therefore driven to conclude that this \$30,000 was Gurvir's money and that it was family property that was contributed towards the Surrey Condo by repaying the \$30,000 loan from one of Jasvir's friends or relatives. As I discuss later, I find this gives Harvir a small interest in the Surrey Condo based on s. 81 of the Family Law Act.

D. The Squamish Property

- [90] The Squamish Property was bought on October 23, 2020 for \$790,000. With closing costs, the total came to \$804,794.34, paid with a combination of mortgages on the Surrey Condo, investments or loans from friends and family, and, it seems, a mortgage on the Squamish Property itself.
- [91] The Squamish Property was registered in Gurvir's name with a 99% interest and Bhupinder Kaur's name with a 1% interest. Harvir claims the property was put in Gurvir's name because it was to be for him and Harvir to live in and was ultimately be paid off by Gurvir, save for the \$775,064.82 still owing to Baldev. She maintains that the equity in the property is a family asset to be equally divided between her and Gurvir.
- [92] The respondents claim the 99% interest in Gurvir's name was done for estate planning purposes. Jasvir had been diagnosed with breast cancer when the property was purchased and she believed it was prudent to put the property in Gurvir's name to simplify estate planning. She said the 1% interest was registered in Bhupinder's name because Bhupinder agreed to be listed as a borrower on a mortgage for the Squamish Property and a second mortgage on the Surrey Condo to help Jasvir and Gurdev qualify for those mortgages.

- [93] Jasvir testified that she and Gurdev bought the Squamish Property with Baldev and Satnam Singh investing to help them out. Jasvir and Baldev testified that their agreement was the property would eventually be sold and they would each share the proceeds of sale in proportion to their respective investments. However, Gurdev testified that he had suggested to Jasvir that they buy the property as a place where they might live in retirement. This is inconsistent with Jasvir and Baldev's evidence that they intended to sell the property to turn a profit. Satnam testified that he was to be repaid his contribution with interest but that has not happened.
- [94] The evidence respecting how the Squamish Property was bought is not entirely clear, largely due to the document production issues. I will explain how I find it was likely purchased based on the evidence that was tendered but there are points that simply cannot be fully explained on that evidence.
1. Loan from TD Bank
- [95] Jasvir testified that \$250,000 for the purchase came from two different loans from the TD Bank secured with mortgages on the Surrey Condo. The first is the \$200,000 mortgage described earlier which resulted in the \$197,893 being deposited into Gurvir's RBC account on June 19, 2020. The second was a \$50,000 mortgage on the Surrey Condo taken out on October 6, 2020 to complete the Squamish Property purchase. As with the first mortgage, the respondents have produced no mortgage documents or statements for the second mortgage but suggest it is documented by a second TD Bank mortgage registered against the Surrey Condo title on October 5, 2020 [Ex. 7 Tab 2] and an October 6, 2020 deposit of \$45,248 into Gurvir's RBC account [Ex. 6 Tab 8, p. 50] that Jasvir said are the proceeds from the mortgage after a deduction by the notary for fees.
- [96] The title search for the Surrey Condo also shows Bhupinder becoming a 1% title-holder of that property as of October 5, 2022. Jasvir testified that she and Gurdev could not obtain a mortgage on the Surrey Condo or on the Squamish Property so Bhupinder agreed to add her name as a borrower to help them out. She works as a registered nurse and her income was sufficient to qualify for the mortgage. She did not invest any money in either the Surrey Condo or the Squamish Property and claims no interest in either but her name was put on title to both with a 1% interest in each to facilitate this transaction. That is also the reason she is named as a respondent in this proceeding, although she did not participate other than as a witness.
- [97] Despite the patchy document production, I am satisfied that the title searches of the Surrey Condo and the deposits to Gurvir's RBC account support Jasvir's testimony. The June 19, 2020 and October 6, 2020 deposits accord with the dates shown for registering TD Bank mortgages against the Surrey Condo. On a balance of probabilities, I accept that the \$197,893 and the \$45,248 are proceeds from a \$200,000 and a \$50,000 TD Bank mortgage on the Surrey Condo.

- [98] I am also satisfied that most of this money went into the purchase of the Squamish Property. The exception is the \$55,000 that was used to repay Jasvir's sister for her loan to buy the Surrey Condo. I trace the balance of the mortgage proceeds as follows:
- a) On September 24, 2020, Jasvir paid a \$37,500 deposit for the Squamish Property by bank draft payable to Oakwyn Realty and drawn on her Bank of Montreal account [Ex. 8 Tab 29]. On September 29, 2022, \$37,500 was withdrawn from Gurvir's RBC account [Ex. 6, Tab 8 p. 50] and deposited in Jasvir's BMO account on October 2, 2020 [Ex. 5]. This appears to be a reimbursement from the TD mortgage funds for the deposit paid from Jasvir's Bank of Montreal account. Thus, although Jasvir was reimbursed from Gurvir's account, the money used reimburse her came from a mortgage against the Surrey Condo and not from money Gurvir earned during the marriage.
 - b) On October 22, 2020, the day before the purchase of the Squamish Property closed, \$157,000 was withdrawn from Gurvir's RBC account, which by now was in the joint names of Gurvir and Jasvir [Ex. 6 Tab 8]. Jasvir testified this was paid to the notary for the purchase of the Squamish Property. I find the source of this \$157,000 is traced to the two TD Bank mortgages on the Surrey Condo.
- [99] Harvir disputes that the \$197,893 came from a mortgage on the Surrey Condo and suggests it likely came from a different loan that Gurvir took out. She points to an October 1, 2020 "Direction to Pay" signed by Gurvir that directs TD Bank to pay \$250,000 in funds from a mortgage of the Surrey Condo directly to the notary who handled the Squamish Property purchase. Harvir's counsel suggests that if a \$200,000 mortgage was taken out on the Surrey Condo on June 19, 2020 and another \$250,000 mortgage on the same property in October 2020, the total mortgage proceeds advanced by TD Bank would be \$450,000 and this would exceed the value of the Surrey Condo. Thus, she suggests the \$197,893 must have come from a different source.
- [100] Counsel for Harvir makes a valid point and I am unable to make sense of the October 1, 2020 Direction to Pay. However, I find this point does not ultimately advance Harvir's claim since even if the \$197,893 was borrowed from another source, it was still borrowed money that would be family debt. I acknowledge that if Gurvir had borrowed \$197,893 from another source during the marriage and contributed that to the purchase of the Squamish Property, that would suggest there is an interest in the Squamish Property that is a family asset (with a corresponding family debt). However, there is nothing in the evidence to suggest that Gurvir could have qualified for a loan of that amount without security and there is no evidence that he had any assets at that time, other than the Surrey Condo registered in his name. Moreover, this does not explain why a TD Bank mortgage was registered against the Surrey Condo title on June 19, 2020.
- [101] Harvir also argues there is no documentary evidence of how the \$157,000 withdrawn from Gurvir's RBC account on October 22, 2020 was used. She argues "it could have been used to pay off borrowed funds." She is correct that there is no documentary evidence to explain

this but since it was withdrawn on the same day that the purchase of the Squamish Property completed, I find that it more likely than not that his money was used to buy the Squamish Property. Regardless, I find this is money traced to the TD mortgages and not money earned by Gurvir during the marriage.

[102] In summary, I make the following findings with respect the TD Bank mortgages of June 19, 2020 and October 6, 2020:

- a) On June 19, 2020 the proceeds from a \$200,000 loan from TD Bank were deposited in Gurvir's account, less \$2,106.50 in notary fees.
- b) On June 30, 2020, \$55,000 was withdrawn on June 30, 2020 to repay Jasvir's sister who loaned money to Jasvir to buy the Surrey Condo. This was drawn from the loan proceeds of the first TD Bank mortgage.
- c) On October 6, 2020, the proceeds of a second TD Bank mortgage on the Surrey Condo for \$50,000 were deposited to Gurvir's RBC account. With a deduction for notary fees, the deposit was \$45,248.06.
- d) Also on October 6, 2020, \$37,500 was paid to Oakwyn Realty for the deposit on the Squamish Property. This was paid from Jasvir's BMO account but was reimbursed from Gurvir's RBC account using the proceeds from the TD Bank mortgages on the Surrey Condo.
- e) On October 22, 2020, the day before the close of the Squamish Property purchase, \$157,000 was contributed to the purchase of the Squamish Property from Gurvir's account, which by now was a joint account with Jasvir.

[103] Thus, a total of \$256,000 was spent on repaying the \$52,000 loan for the Surrey Condo (with an additional \$3,000 that I infer was interest), notary fees, and the purchase of the Squamish Property. Only \$250,000 of this can be explained by the TD Bank Loan. The source of the additional \$6,000 is not explained but that is a relatively insignificant amount.

[104] To this point, I have documented \$194,500 that was contributed to the purchase of the Squamish Property (\$37,500 deposit plus \$157,000 towards the balance). As the total purchase price was \$804,794, this leaves \$630,294 still to be explained which I will address next.

2. Other Contributions from Jasvir

[105] Jasvir made two further payments towards the Squamish Property. One was a Bank of Montreal draft dated October 22, 2020 for \$29,000 [Ex. 8 Tab 9] and the other was a TD Bank draft dated October 23, 2020 for \$40,000 [Ex. 8 Tab 26]. Both were payable to Rajdeep Randhawa Notary Inc. and drawn from accounts in Jasvir's name. I accept these were paid towards the purchase of the Squamish Property and there is no evidence linking these payments to Gurvir.

[106] That leaves \$561,294 of the total purchase price to be explained.

3. Baldev's Initial Contribution

[107] The next contribution to the Squamish Property came from Baldev in the form of a CIBC bank draft dated October 22, 2020 for \$290,000 payable to Rajdeep Randhawa Notary Inc. [Ex. 8 Tab 11]. This draft was drawn from Baldev's home equity line of credit and I accept Baldev's evidence that he contributed this to the purchase price.

[108] This leaves \$271,294.34 to be explained.

4. Satnam Singh's Contribution

[109] Satnam Singh contributed another \$148,000 by way of a Royal Bank draft dated October 22, 2020 payable to Rajdeep Randhawa Notary Inc. [Ex. 8 Tab 10]. Satnam agreed to loan this money to allow Jasvir and Gurdev to buy the property.

[110] This leaves \$123,294 to be explained.

5. Mortgage on the Squamish Property

[111] On November 4, 2020, a TD Bank mortgage was registered against the Squamish Property as shown on a title search [Ex. 7 Tab A4]. Once again, the mortgage documents have not been disclosed. Jasvir testified that the mortgage was for approximately \$535,000 but Harvir submits it was likely more than this because when Baldev paid it off in 2022, the balance was apparently \$530,799. Harvir suggests the principal should have been reduced by more than \$4,200 with two years of payments, although I am not sure that is correct. Regardless, there is no evidence of how these mortgage proceeds were used. Harvir submits the proceeds were likely used to repay the money that Jasvir, Baldev, and Satnam had loaned or invested into the Squamish Property since the mortgage proceeds, combined with the other contributions to the purchase of the Squamish Property, exceed the \$804,794 needed for the purchase.

[112] I agree with Harvir that the evidence is unclear on exactly how these mortgage proceeds were used. This mortgage would account for the remaining \$123,294 that is left unexplained by the evidence of other contributions towards the purchase of the Squamish Property but if the mortgage principal was truly \$535,000, there is an excess of \$411,706 that has not been explained. However, even if this money was used to repay others for contributions to either the Surrey Condo or the Squamish Property, it is still a repayment using debt rather than money Gurvir earned during the marriage. Moreover, it was Baldev and not Gurvir who later paid off this mortgage.

6. Conclusion on Purchase Price for the Squamish Property

- [113] The documentary evidence adequately supports all but \$123,294 of the purchase price for the Squamish Property coming from the Surrey Condo mortgages, Jasvir's own account, Baldev's contribution and Satnam's contribution. There is no clear evidence explaining where the \$123,294 shortfall was made up but it is likely explained by the mortgage on the Squamish Property.
- [114] Despite the uncertainties in the documentary evidence, I am unable to conclude that this or any significant part of the Squamish Property was purchased using money Gurvir earned during the marriage. Gurvir's highest income-earning year was in 2020 when he earned \$37,199 which is well short of being able to make a meaningful contribution to the Squamish Property, particularly since I have already attributed \$30,000 that Gurvir received in that year to the Surrey Condo. Even if I draw an adverse inference against the respondents for their incomplete document production, I am unable to conclude that Gurvir was capable of making any significant contribution to the Squamish Property during the marriage or at any time.

E. Bhupinder Removed from Title to Both Properties

- [115] In 2022, Bhupinder wanted to have her name removed from the mortgages for both properties because she hoped to obtain her own mortgage to buy a home for herself. The first TD Mortgage on the Surrey Condo had been cancelled on March 12, 2021. There is no evidence explaining why or how this was done but it seems the first mortgage may have been consolidated into the second.
- [116] Regardless, on October 5, 2022, Baldev paid out the balance owing on the remaining TD Bank mortgage on the Surrey Condo [Ex. 7 Tab A17 p. 43]. According to a statement of adjustments for this transaction, the amount paid out was \$244,264.91 [Ex. 7 Tab A21] (which suggests the two TD mortgages on the Surrey Condo had been consolidated). Baldev then replaced Bhupinder on title for the Surrey Condo with a 1% interest [Ex. 7 Tab A17].
- [117] Baldev also paid off the balance owing on the TD mortgage registered against the Squamish Property [Ex. 8, Tab 16] and replaced Bhupinder as the 1% title holder on that property [Ex. 7 Tab A14]. According to an Order to Pay, the amount he paid off was \$530,799.91 [Ex. 8, Tab 16]. He said he used a TD Home Equity line of credit secured against his own home to make the payment [Ex. 8, Tab 13]. Among the documents supporting this is an unsigned Order to Pay issued to "Notary Public Rajdeep" that identifies Baldev as the "borrower" and Baldev's home as the "Property". The Order to Pay does not have a specific date but states at the bottom that it is "Dated at Surrey, British Columbia, this ___ day of January, 2024." I am unable to make sense of that date since the transaction occurred a few months before that. However, the Order to Pay concerns funds received from the TD Bank in the amount of \$599,700.00 and includes an order to payout a TD mortgage of \$530,799.91 for the Squamish Property. Baldev's home equity line of credit statement shows a September 8, 2023 payment of \$599,700 to "Solicitor Proceeds" which appears to support this transaction.

- [118] Apparently to facilitate this payment, Satnam Singh provided Baldev with \$120,000 on August 1, 2023 so that Baldev could increase his line of credit. A bank draft for this amount dated August 1, 2023 payable to Baldev is in evidence [Ex. 15, Tab 15] but there are no bank records showing where this money was deposited.
- [119] Harvir accepts that Baldev paid off these two mortgages and thus acknowledges that \$775,064 is to be credited to Baldev for the two properties. She suggests any other contributions that Baldev, Jasvir, Gurdev, or Satnam made to either property have been repaid by Gurvir but, as mentioned, I am unable to conclude he had any financial capacity to do so.

F. Conclusion on Contributions to the Properties

- [120] I am persuaded that, on a balance of probabilities, Jasvir, Gurdev, and Baldev, with help from Satnam and other friends or family, contributed the vast majority of the money to purchase the Surrey Condo and all the money to buy the Squamish Property. The only exception to this is the repayment of a \$30,000 loan from Jasvir's friend or relative to help buy the Surrey Condo. That loan was repaid from money deposited to Gurvir's RBC account during the marriage. Since there is no explanation or documents explaining that deposit, I can only conclude the \$30,000 was Gurvir's money received during the marriage and it was contributed to the Surrey Condo by repaying Jasvir's friend or relative. I find that Gurvir made no other financial contributions to either property.

VI. Entitlement to the Properties

A. Resulting Trust

- [121] The respondents argue that Gurvir holds both the Surrey Condo and the Squamish Property on a resulting trust for at least Jasvir and Baldev. A presumption of resulting trust arises when one person gratuitously transfers property to another or contributes money to the purchase of property in another's name. When that happens, it falls to the other person to show that the transfer was a gift or made for some other purpose. The Supreme Court of Canada explained the principle as it relates to a "purchase money resulting trust" as follows in *Nishi v. Rascal Trucking Ltd.*, 2013 SCC 33 at paras. 1 and 21:
- [1] A purchase money resulting trust arises when a person advances funds to contribute to the purchase price of property, but does not take legal title to that property. Where the person advancing the funds is unrelated to the person taking title, the law presumes that the parties intended for the person who advanced the funds to hold a beneficial interest in the property in proportion to that person's contribution. This is called the presumption of resulting trust.

- [121] The purchase money resulting trust is a species of gratuitous transfer resulting trust, where a person advances a contribution to the purchase price of property without taking legal title. Gratuitous transfer resulting trusts presumptively arise any time a person voluntarily transfers property to another unrelated person or purchases property in another person's name (D. W. M. Waters, M. R. Gillen and L. D. Smith, eds., *Waters' Law of Trusts in Canada* (4th ed. 2012), at p. 397).
- [122] A resulting trust is a rebuttable presumption that arises in the circumstances just described. As stated in *Pecore v. Pecore*, 2007 SCC 17 at para. 22:
- [22] A rebuttable presumption of law is a legal assumption that a court will make if insufficient evidence is adduced to displace the presumption. The presumption shifts the burden of persuasion to the opposing party who must rebut the presumption
- [citations omitted]
- [123] I find that the presumption of a resulting trust arises with respect to both properties due to the contributions of purchase monies for both properties by Jasvir, Gurdev and Baldev. There is no evidence their contributions were loans and no evidence that Gurvir repaid them or that he had any financial capacity to do so.
- [124] It falls to Harvir to rebut the presumption which she seeks to do by claiming Gurvir repaid everyone for their contributions to the properties except for the \$775,064.82 that Baldev used to pay off the mortgages on the two properties. She argues that since the respondents have failed to disclose complete banking records and mortgage documents relating to the contributions to these properties, the monthly mortgage payments, and the full use of mortgage proceeds, the Court should draw an adverse inference against the respondents and conclude that Gurvir repaid all contributors for the properties other than the \$775,064 owed to Baldev.
- [125] I agree with Harvir that the respondents' failure to produce relevant documents has made this case far more difficult than it needed to be for both Harvir and the Court. Despite that, I am unable to conclude that Gurvir repaid the other respondents for the cost of these two properties for the simple reason that, during the short marriage, he did not earn and was not capable of earning anything close to what was needed to repay those contributions.
- [126] Thus, I find that Gurvir holds both properties on a resulting trust for Jasvir, Gurdev, and Baldev, with the exception of a fractional interest in the Surrey Condo based on the \$30,000 contribution from the unexplained deposit to Gurvir's RBC account between March 12 and June 15, 2020.

B. Value of Gurvir's Interest in the Surrey Condo

- [127] I find that Gurvir's proportionate share of the beneficial interest in the Surrey Condo equals 9% of its value. I base that on the relative value of a \$30,000 contribution to the overall purchase price of \$330,000. While that value may have increased between December 19,

2019 when the property was purchased and June 24, 2020 when the \$30,000 was repaid from funds in Gurvir's RBC account, there is no evidence of what that increase in value might be. (The only other evidence of value is the appraisal dated October 15, 2023.) A \$30,000 contribution to the \$330,000 purchase price for the Surrey Condo yields a 9% interest in the property.

- [128] Under s. 81 of the Family Law Act, Gurvir's 9% interest is presumptively divided equally between Gurvir and Harvir as family property valued at the time of trial. Although the Surrey Condo was bought before the marriage, the \$30,000 contribution was made during the marriage with funds Gurvir received during the marriage.
- [129] The most current evidence of value of the Surrey Property is the 2023 appraisal which sets a value of \$455,000 as of October 15, 2023. The parties did not seek an updated appraisal for trial. Harvir argues the Court should order the sale of the Surrey Condo so that she may realize on her interest based on the true fair market value. However, that submission presumed she had a one-half interest in both properties. Assessing her entitlement to a one-half interest in a 9% share of the Surrey Condo does not justify an order to sell the property and is not proportionate to the cost of an updated appraisal. I will therefore look to another way to assess the value as of trial.
- [130] According to the 2025 BC Assessment, the value of the Surrey Condo as of July 1, 2023 was \$444,300 and as of July 1, 2024 was \$455,500. That represents a 2.5% increase from July 2023 to July 2024. There is no evidence from which I can determine what might have happened to the value after July 1, 2024. I will therefore apply the 2.5% increase to the 2023 appraised value of \$455,000 and conclude that the value of the Surrey Condo as of trial is \$466,375. Gurvir's 9% interest in that value represents \$41,974 which I round up to \$42,000. Pursuant to s. 81 of the FLA, I find Harvir is entitled to one half of that amount being \$21,000. In lieu of ordering the Surrey Condo be sold, I order that Gurvir, Jasvir, Gurdev, and Baldev pay Harvir \$21,000 in an equalization payment to compensate her for her interest in that property.

VII. Spousal Support

- [131] Harvir argues that if the Court finds against her on property division she is entitled to spousal support. She did not make a specific submission on entitlement but suggested that she had a needs-based entitlement in at least the year or so following separation. She argues that I should impute income to Gurvir based on his best year of income (\$36,162 in 2020) plus another \$33,400 in rental income attributable to the properties for a total of \$68,592.
- [132] Having regard to the factors and objectives for spousal support found in s.15.2(4) and (6) of the Divorce Act, I am not persuaded Harvir has established entitlement. This was a very short marriage of only one year. Neither party had any significant income during the relationship and neither became dependent on the other's income. Harvir was in the paid workforce both before and after the marriage. According to her Immigration Application,

she was also working at Petro Canada at least up to June 2020 if not later. The evidence respecting the functions performed by each spouse is clouded by credibility problems with both Harvir and Gurvir's evidence. The hardship that Harvir experienced from the marriage breakdown as it relates to spousal support amounted to losing a place to live. Considering all the factors, I am not persuaded Harvir has established entitlement to spousal support beyond the payment I have ordered for property division.

VIII. Divorce

[133] Harvir seeks an order for divorce. The parties have lived separate and apart since April 2021. There are no children of the marriage and I am satisfied there is no collusion in seeking the divorce. The marriage certificate has been filed and a clearance certificate received. I will grant the divorce order in the usual terms.

IX. Costs

[134] The respondents were overwhelmingly successful in this litigation. Harvir sought a one-half interest in both properties which, after accounting for the \$775,064 she acknowledged had to be repaid to Baldev, would have been valued in excess of \$400,000. I have substantially dismissed her claim save for a \$21,000 equalization payment.

[135] Despite that, I decline to award the respondents their costs. Their failure to produce documents that are clearly relevant to this case is deserving of rebuke. It made the case much more complicated to try and to decide. Had the respondents complied with their document production obligations, Harvir may well have recognized that she had a very limited chance of success and avoided a trial. I have no doubt the findings of fact would have come much easier on a proper documentary record. I therefore order that the parties bear their own costs of this proceeding despite the respondents' success.

"Kirchner J."

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