

CANADA / JUDGMENT

Levington v. Benson

2022 BCSC 2171

COURT

Supreme Court of British Columbia

DECIDED

13 December 2022

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

2022 BCSC 2171 Levington v. Benson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Levington v. Benson,

2022 BCSC 2171

Date: 20221213

Docket: S92430

Registry: Nanaimo

Between:

Steven Edward Levington

Plaintiff

And

Adalena Marie Benson

Defendant

Before: The Honourable Justice Branch

Reasons for Judgment

Counsel for the Plaintiff:

R.D. Oliphant

The Defendant, appearing in person:

A. Benson

Place and Date of Trial:

Nanaimo, B.C.

October 18-21, 2022

Place and Date of Judgment:

Nanaimo, B.C.

December 13, 2022

Table of Contents

I. INTRODUCTION.. 3

II. FACTUAL BACKGROUND.. 3

III. ANALYSIS.. 14

A. Credibility. 14

B. Declaration of Ownership. 27

IV. CONCLUSION.. 28

I. INTRODUCTION

- [1] They say that love can make one do questionable things. On the facts of this case, did that potential effect extend to the plaintiff making an \$80,000 gift to the object of his affection? That is the question at the core of this claim.

II. FACTUAL BACKGROUND

- [2] The plaintiff, Steven Levington, claims a 20% interest in a property located at 2548-17th Avenue, Port Alberni, BC (the "Home") based on his provision of \$80,000 towards its purchase (the "Contribution"). The defendant Adalena Benson does not deny receipt of the Contribution, but says that (1) it was initially a loan; and (2) it was later converted to a gift.
- [3] The parties had known of each other for several years, but their relationship became more involved in or about August 2019. Mr. Levington asserts that he and Ms. Benson began a romantic relationship at that time. He alleges that on their first date they engaged in sexual activity just short of intercourse. Mr. Levington says that shortly after their relationship began he and Ms. Benson started discussing the possibility of purchasing a home together.
- [4] Ms. Benson agrees that Mr. Levington raised the possibility of purchasing a Home together, but says she was never interested in such a proposal.

- [5] Ms. Benson also denies that there was any romantic element to their relationship. She says that she needed some help serving documents on her ex-spouse and that Mr. Levington offered to help. In September 2019, Mr. Levington sold his home and needed a place to stay. She felt she owed him. As such, she agreed to let him stay at her home in Ladysmith, BC (the "Ladysmith House"), but only as a basement roommate. She denies that they were ever physically intimate with each other.
- [6] Mr. Levington agrees that he lived in a separate bedroom in the basement of the Ladysmith House, but says this was only because the parties did not want to upset the defendant's children by introducing a new person into their life given that Ms. Benson was in the midst of divorce proceedings.
- [7] In November 2019, Ms. Benson sold the Ladysmith House and entered into a contract to purchase the Home. The purchase of the Home had a closing date of November 29, 2019. There is no dispute that Ms. Benson initially planned to purchase the Home without any contribution from Mr. Levington.
- [8] However, on or about November 22, 2019, Ms. Benson advised Mr. Levington that she now lacked the funds necessary to complete the purchase of the Home. Ms. Benson advised Mr. Levington that she was short approximately \$80,000 (the "Shortfall"). Ms. Benson says that the Shortfall arose because an excess amount from the proceeds of sale of the Ladysmith House had been distributed to her brother. Her brother refused to return the excess funds. Hence, the Shortfall came as an unfortunate surprise. Ms. Benson asked Mr. Levington if he could fill this Shortfall.
- [9] Mr. Levington agreed to provide the necessary funds, being a total of \$80,597.62. He says these funds were provided as part of purchasing an ownership stake in the Home, and not as a loan. Ms. Benson says that Contribution was initially a loan.
- [10] The Contribution was provided in two installments in the form of cheques paid directly to Ms. Benson's notary Robson O'Connor. The first was provided on or about November 22, 2019 in the amount of \$79,340.12. The second was provided on or about November 29, 2019 in the amount of \$1,257.50. The Contribution represented approximately 20.6% of the total \$390,000 purchase price for the Home.
- [11] I note that although Mr. Levington had at the relevant time proceeds from the sale of his own house, he was not a rich man. \$80,000 would have represented a very large sum for him.
- [12] The Home was initially registered in the name of Ms. Benson alone. Mr. Levington explains this on the basis that he was busy with courses at school during this period, so he could not get around to attending a notary's office to sign the necessary paperwork to put him on title.
- [13] The proper characterization of the Contribution is the key issue in the case.

- [14] As noted, Mr. Levington alleges that it was an investment, such that he is entitled to a 20% interest in the Home. He suggests that it was quite natural that the parties would purchase the Home together given their ongoing romantic relationship.
- [15] As noted, Ms. Benson provides a much different version. She says that:
- a) When she first received the Contribution, it was as a loan that she intended to repay as soon as possible. However, she offers no details on the terms of this loan.
 - b) On or about Christmas Day, Mr. Levington converted this loan to a gift by giving her a card in which he placed a copy of the larger cheque earlier provided to her notary, and which now had written on the back "To Lena Love Steven Levington" (his signature was in cursive, with the rest in block letters). He allegedly told her that he was now gifting the Contribution to her in return for her entering into a romantic relationship with him. He also threatened to testify for her ex-husband in their ongoing family proceedings if she did not enter into such a relationship with him. (I note that the cheque with the writing on the back was put into evidence, but the card was not. Ms. Benson said that she only just rediscovered the cheque, and she does not know where the accompanying card ended up.)
 - c) On or about Boxing Day, she told him she would accept his gift, but that she refused to enter into a romantic relationship with him. She says he did not object, presumably because he believed he still had a chance to change her mind.
 - d) Although she declined to enter into a romantic relationship with Mr. Levington, he nonetheless moved into the Home with her, again living in her basement. Ms. Benson says that she was afraid to ask him to leave because she was nervous that he would testify for her ex-husband.
- [16] Mr. Levington says that the parties finally made arrangements in July 2020 to see a notary named Kurt Meyer in order to arrange for Mr. Levington's 20% interest in the Home to be formally reflected on title.
- [17] Mr. Meyer gave evidence in chief by way of deposition evidence pursuant to a September 22, 2022 court order. This order was put in place due to Mr. Meyer's unavailability for the scheduled trial dates. In light of certain administrative difficulties that prevented Ms. Benson from attending the deposition, I required that Mr. Meyer be made available at trial by telephone for cross-examination before the deposition transcript would be admitted. The defendant agreed that a telephone cross-examination would be adequate for her purposes.
- [18] Mr. Meyer's key evidence was as follows:
- a) He has been a notary since June 2018;
 - b) He has a professional obligation to ensure that any individual signing real estate documents are who they purport to be;
 - c) Mr. Levington called his office to make the appointment;

- d) Mr. Meyer met with the parties on July 16, 2020;
 - e) The parties instructed him that their wish was that Mr. Levington be registered on title for his interest in the property as, for mortgage or credit reasons, he had not been added onto title when it was originally transferred;
 - f) Mr. Meyer asked whether the division would be 50/50, as that was how the documents had been drafted. The parties "both jumped in simultaneously, at the same time and said 'No, No, no. It's 20 percent. Only 20 percent.'";
 - g) he watched both parties execute the documents required to transfer a 20% interest to Mr. Levington as a tenant in common;
 - h) Ms. Benson produced a Care Card as identification. She rummaged through her purse, but could not find any identification with a photograph. She said she must have left her wallet at home, but that she would bring in her photo ID later that afternoon;
 - i) Mr. Meyer's office did follow up with Ms. Benson once, maybe twice, for her photo ID;
 - j) although Ms. Benson did not return with photo ID, his office registered the transfer, which Mr. Meyer acknowledges was an administrative oversight;
 - k) Mr. Meyer's office later sent out a State of Title Certificate to the parties addressed to the Home; and
 - l) his office did not hear further from Ms. Benson until she attended at the office again in mid-January 2021.
- [19] Ms. Benson flatly denies that she attended at Mr. Meyer's office in July 2020. She alleges that her signature on the transfer documents is a forgery. Her theory is that Mr. Levington (1) stole her Care Card from her wallet; (2) hired a sex worker to impersonate her at the meeting with Mr. Meyer in order to sign the relevant documentation; and (3) intercepted the State of Title Certificate with both their names on it before she could read it.
- [20] A video was put in evidence of a subsequent January 2021 meeting between Mr. Meyer and Ms. Benson (the "Meyer Video"). The Meyer Video was taken covertly by Ms. Benson. In the Meyer Video:
- a) Ms. Benson does not introduce herself, but it seems clear that Mr. Meyer recognizes her. I note that in his deposition evidence Mr. Meyer confirms that he recognized her even before speaking to her, although though she did not have an appointment.
 - b) Ms. Benson starts speaking to Mr. Meyer as though she was present at the July 16, 2020 meeting, and Mr. Meyer does not react with confusion. Indeed, he launches immediately into a discussion about her having lacked her photo ID, even though she still had not given him her name at the January 2021 meeting.

- c) Mr. Meyer then launches into a discussion about how that he could look at her ID now. He then attempts to get Ms. Benson to confirm details of their July 2020 meeting. Ms. Benson refuses to confirm or deny any details. Mr. Meyer continues to press the fact that he recalls her being there. She denies it. He says he remembers her, and that he "remembers the tattoos". She says she did not have the tattoos at the time. Mr. Meyer then states that his assistant remembers her. She presses him further on the tattoos. He says that he remembers they were "very similar, if not them". He then says "I do remember the dog one, for sure".
 - d) Ms. Benson's tone is confrontational and aggressive throughout this interaction. Mr. Meyer received it that way, describing her in his deposition as "loud and belligerent". He notes that he had to ask her to step into his private office where he could close the door.
- [21] Beyond the surreptitious recording, in his deposition evidence, Mr. Meyer gave more information as to what was familiar to him about Ms. Benson. He says it was ere her "characteristics. Her appearance, size. Some, you know, tattoos. Her - her voice, her tone of voice once she spoke. Everything. I mean there was no doubt in my mind it was her."
- [22] Ms. Benson put forward evidence suggesting she did not have the visible wolf or bear tattoos at the time of the original July 2020 meeting, although she did have other tattoos (but not of a dog).
- [23] On either parties' version of events, the parties had a very unusual relationship:
- a) Their finances became quite mingled, with each buying various groceries, appliances, carpets, etc., with minimal effort at maintaining a formal accurate accounting.
 - b) Mr. Levington says that he paid for many groceries, some fencing, a hot water tank, certain household furnishings, and other expenses towards the maintenance and improvements of the Home. Mr. Levington says he paid approximately \$28,839.68 for various maintenance and improvements.
 - c) There is evidence of substantial cash transfers going from Mr. Levington to Ms. Benson, and from Mr. Levington to contractors. Ms. Benson says that the transfers largely reflect the immense amount of food Mr. Levington was eating, as Mr. Levington is quite overweight.
 - d) Ms. Benson's friend, Rachael Wilson, described how Ms. Benson never wanted to be in the same room as Mr. Levington.
 - e) Ms. Benson took videos of certain exchanges with Mr. Levington. In one of these videos he states "I helped you with this house because I loved you". Later in the same video he says "I wouldn't buy a house with someone I did not love".
 - f) At no point in the videos does Ms. Benson express any affection towards the plaintiff. In one video, she describes Mr. Levington as a "fat piggy".

- g) Mr. Levington often messaged Ms. Benson in a sexualized manner, including referring to masturbating in her presence, sucking her toes, exposing himself, groping her, trying to make her touch him, and peeping on her or others. Some of the content of the videos entered into evidence reflect similar conversations.
- h) The parties' texts show Mr. Levington attempting to be kind and loving towards Ms. Benson (referring to her as "love" without objection), but again Ms. Benson shows no warmth in the other direction. She repeatedly calls Mr. Levington lazy and disgusting.
- i) That said, Ms. Benson was sufficiently confident in their relationship to order Mr. Levington to perform tasks, such as picking up groceries, fast food and hardware.
- j) There were undated Facebook messages purportedly between the parties stating the following:

Ms. Benson: I was caught off guard when you said that the \$80,000 was a gift because you love me, and that you "don't buy a house with just anybody" and were expected a relationship now. You messaged me on fb right after you found out Steve and I were divorcing and that I was selling this house, back in 2018, and asked me if I wanted to buy a house with you. You obviously weren't in love with me when you first asked about purchasing a house with me

Mr. Levington: I was in love with you when I first asked. I don't just buy a house with anyone. I gave you the \$80,000 because I love you. You're my dream girl, and I want to marry you. I've been very generous, and I know you're going to love me [too].

Ms. Benson: How could you love me back in 2018? The last time I even saw you was at my wedding in 2009, and I didn't even talk to you then. In fact, because Steve was so controlling and didn't like me talking to other men, I don't think I'd ever even had a conversation with you, prior to you messaging me and asking me if I wanted to combine our money and purchase a house together. And I'm 100% not interested in a relationship .

Mr. Levington: Yes, I was in love with you when I first asked to buy a place. I fell in love with your posts and sense of humor. If you refuse a relationship with me, I'll make sure you'll have to sell this place. Moving here then selling this place immediately won't look good. I know Steve didn't want you moving here, and he'll use this against you. You'll look unstable. Maybe you'll even lose your kids. I'll probably be asked to testify against you. Are you willing to lose your kids? I've been very good to you, giving you this gift, and you say you don't want a relationship with me. You should think of your children.

Ms. Benson: You're claiming you fell in love with me based off the memes I post? And now you're threatening my children? That's not love!

Mr. Levington: You can take it however you want, [I'm] just telling you what will happen if you try and refuse me. I love you, and I've been good to you. You owe me.

- k) There were undated alleged messages purporting to be between Mr. Levington and a third-party introduced into evidence. In one reported exchange Mr. Levington states:

Mr. Levington: I gave her \$80,000. I saved her, and she betrayed me. She married a guy who beat her. Dated a guy who cheated on her. Then I give her this huge gift, and instead of loving me she started having sex with an idiot who is schizo. Girls always want assholes. It's true what they say, nice guys finish last.

- l) There was another alleged exchange between the parties about the fact that a door had been installed on Ms. Benson's son's door:

Ms. Benson: You installed a lock on the outside of Donovan's door! Wtf!

Mr. Levington: It will keep him in his room at night.

Ms. Benson: It's illegal, and dangerous. What if there was a fire?

Mr. Levington: It's my house too, and they're going to be my kids. So I don't care what you think.

[Emphasis added.]

- [24] Mr. Levington denies sending the quoted messages above. He alleges they were forged. He called lay evidence from a friend, Sarah Van Egmond, who showed how she was able to set up a fake Facebook account that looked like it was controlled by Mr. Levington, and then was able to send messages from this account.

- [25] Mr. Levington says that he was unable to produce the original message string with the appellant to prove that the messages were fake because Ms. Benson had blocked him, which removed his access to their earlier conversations.

- [26] There are certain other unchallenged messages from Mr. Levington to Ms. Benson dated August 10, 2020 and September 2, 2020 in which Mr. Levington presses Ms. Benson to go into the notary's office. Mr. Levington says this was part of his effort to prod her to bring in her photo ID, as Mr. Meyer requested. Ms. Benson denies this, and says that he was actually encouraging her to go into a notary's office to get a will prepared.

- [27] Within the contested Facebook messages discussed above, there was another undated exchange discussing the possible preparation of a will:

Mr. Levington: I don't want to pick up groceries. I always transfer the money back. It's not like I'm keeping it from you. You still need to go talk to the notary, like I asked.

Ms. Benson: You think I like having to ask you to pick up groceries? It was only supposed to be until I got a replacement tire, but [I've] lost my license. I'm obviously not happy about it. I don't want to have to ask anything at all of you. I'll deal with making a will when I don't have so much on my plate, and it's actually kind of creepy how you've become obsessed with it lately. I'll see the notary when I see them.

Mr. Levington: I heard you talking with Rachel and Teagen about making a will. I think that's a good idea. I want to make sure that if anything happens to you that I won't lose the money I put into this place. I think you can't write something up and then get it notarized and then it's legal. There's a notary in town I know. You should go talk to him.

[Emphasis added.]

[28] Whatever relationship the parties had began to break down in the fall of 2020. Mr. Levington moved out of the Home on September 30, 2020. Ms. Benson says that she was involved in a new relationship and Mr. Levington was upset by this change in her status.

[29] Mr. Levington introduced a Facebook posting made on or about October 9, 2020 by Ms. Benson stating:

I had purchased this place and was left \$80,000 short and told I needed to find the funds by the end of the day or I'd be sued. My roommate who was living in my old place had sold his house and had been trying to convince me to buy a place with him, because he couldn't afford much of a place, and I had refused because I didn't want to owe anyone anything. Put in this position, I accepted. He owns 20%...He owns 20% and paid \$80,000. But I got the house below value so he told me he's coming after 20% of that value, which is \$100,000.

[Emphasis added.]

[30] When this posting was put to Ms. Benson, she said that she was just reflecting the reality of the state of title, rather than making an admission.

[31] On December 9, 2020, Mr. Levington commenced a petition under the Partition of Property Act, R.S.B.C. 1996, c. 347 [PPA]. On April 26, 2021, the court ordered that his petition be converted into a Notice of Civil Claim.

[32] On June 7, 2021, Mr. Levington's counsel wrote to Ms. Benson in order to try and facilitate refinancing of the Home so that Ms. Benson could potentially put funds in trust in return for clear ownership of the Home while their dispute continued to be litigated. Mr. Levington was prepared to remove his Certificate of Pending Litigation if a sufficient amount were put in trust. Ms. Benson never took up this proposal.

[33] Ms. Benson began to make serious allegations of misconduct not only against Mr. Levington, but also against his counsel. She alleged that counsel was "helping [Mr. Levington] rape me" and "that makes you a rapist too."

[34] On April 26, 2022, Ms. Benson sought an adjournment of the pending trial. This adjournment was granted, but Justice Steeves ordered Ms. Benson to update Mr. Levington's counsel as to her ability to secure financing in the amount of \$125,000 to facilitate removal of the Certificate of Pending Litigation. No response was ever provided by Ms. Benson.

- [35] On September 26, 2022, there was a Port Alberni municipal tax auction for the Home as a result of unpaid taxes in the amount of \$12,465.67. It was sold conditionally for \$155,000. However, there is a one-year redemption period. Mr. Levington's counsel estimates that redemption will require approximately \$18,000 after inclusion of additional costs and penalties.
- [36] The 2020 Property Tax Assessment suggests a value for the Home of \$468,000. However, a later court-ordered February 16, 2022 appraisal yielded a \$625,000 valuation if its yard were cleaned, and \$620,000 if not.
- [37] Ms. Benson continues to reside in the Home. She says she is presently unemployed as a result of disability caused by various physical and mental health ailments.

III. ANALYSIS

- [38] Was the Contribution a gift or an investment? This question turns in large part on the credibility of the witnesses.

A. Credibility

- [39] The testimony given by the two parties is impossible to reconcile, meaning that one or both are not telling the truth.
- [40] In *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296, the court summarized the test for the assessment of credibility as follows:
- [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. 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. 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.

[Emphasis added; citations omitted.]

- [41] Both parties' stories lack harmony with other evidence presented at trial.
- [42] In terms of the questions raised by Mr. Levington's version of events:
- a) If the parties were so close that they were planning to buy a home together as a couple, why was Ms. Benson initially planning to purchase the Home alone?

- b) Why could Mr. Levington not have carved out an hour to attend at the notary's office at the time of the original purchase in order to ensure that his interest in the Home was properly registered on title? School work may be intense, but is rarely so all-consuming that a few hours cannot be carved out for important business dealings.
- c) The following factors weigh against Mr. Levington's suggestion that the parties were romantically involved:
 - i. there is not a single message between the parties in which Ms. Benson expresses even the slightest degree of warmth towards Mr. Levington;
 - ii. Mr. Levington did not call any witnesses to validate that the parties held themselves out as a couple;
 - iii. Rachel Wilson, an acquaintance who spent a good deal of time at the Home, testified that Mr. Levington never showed any warmth towards Ms. Benson's children; and
 - iv. Mr. Levington always lived in the basement suite in both homes. His explanation about not confusing the children only goes so far. The children were obviously going to learn that the parties were in a relationship at some point, if that were indeed the case. But Mr. Levington was never invited to sleep upstairs. At a certain point, one might have expected a more traditional couples' sleeping arrangement.

[43] There are similar problems with Ms. Benson's version of events:

- a) Inviting someone to live in your home simply because they helped serve documents would be quite unusual.
- b) Why was there not a more detailed discussion between Ms. Benson and Mr. Levington as to the terms of any loan when his funds were first provided?
- c) \$80,000 would be a tremendously large gift for someone like Mr. Levington to make to an individual with whom he was not in a romantic relationship.
- d) If Ms. Benson was concerned that Mr. Levington was attempting to blackmail her into a relationship, why did she both accept his money and refuse the relationship. One would have expected that this combination would have been the most likely to anger Mr. Levington. If she had refused the relationship and refused the gift, at least Mr. Levington would have had \$80,000 to ease the pain of her rejection. If she had accepted the \$80,000 and agreed to a relationship, Mr. Levington would clearly have been pacified. If she had rejected the \$80,000 and agreed to a relationship, Mr. Levington would presumably have been over the moon. But she chose the combination most likely to drive him into the arms of her ex-husband's legal counsel.
- e) If Mr. Levington were a mere tenant, it is difficult to understand:

- i. Why there was not a more careful accounting of the funds spent by each party during their time together.
 - ii. Why did Ms. Benson feel comfortable to issue such blunt orders to Mr. Levington. One would have expected more consideration towards a renter.
- [44] With such contrasting (and internally inconsistent) versions of events, the Court must look to contemporaneous documentation or independent evidence for guidance.
- [45] Beginning with the available documentation, it is difficult to know what to make of the contested messages introduced by Ms. Benson. I accept Ms. Van Egmond's evidence that it is possible to make a fake Facebook profile and send messages from same. However, I find that the messages are nonetheless admissible. The Canada Evidence Act, R.S.C. 1985, c. C-5 [CEA] requires only that an electronic document be authentic and meet the common law "best evidence" rule. Here, Ms. Benson did explain the source of these messages and how they came to be printed out. They appear to be what they purport to be, and there is no obvious element suggesting a forgery. I find that they did generally reflect Mr. Levington's "voice" as I became familiar with it both during his testimony and from other admissible evidence: *Holden v. Hanlon*, 2019 BCSC 622 at paras. 47-51; *R. v. Ball*, 2019 BCCA 32 at paras. 69-80. In terms of the "best evidence" rule, Ms. Benson said that she had trouble extracting the evidence electronically as she does not have a computer. The threshold required by s. 31.1 of the CEA has been described as "a low threshold"; the party seeking to admit the electronic document "does not need to prove that the electronic document is an exact and complete copy": *Holden*, para. 48.
- [46] That said, although admissible, there remain aspects of this evidence that require that its weight be carefully controlled:
- a) The lack of dates on the contested messages diminishes their weight. The longer they were sent after the relevant time period, the less material they would be.
 - b) It is Ms. Benson who introduces the concept of "gift" in the messages in a manner that might be viewed as a "leading question".
 - c) Mr. Levington first describes what happened as "buy[ing] a house with" Ms. Benson. This language is more akin to an investment than a gift.
 - d) The content of the messages is very similar to Ms. Benson's recounting of what happened orally over Christmas 2019. Are the messages influencing her evidence as to the oral conversation, or vice versa?
 - e) In the messages, Mr. Levington says he has been good to Ms. Benson by "giving her this gift". However, even the provision of a loan or an investment which allowed her to purchase the Home could be described as a "gift" in a vernacular sense, i.e. that Mr. Levington provided her with something she needed.

- f) Mr. Levington declares in the messages that "It's my house too", which is more consistent with an investment than a gift.
 - g) In relation to the notary, Mr. Levington says that a visit is necessary to "make sure that if anything happens to you that I won't lose the money I put into this place", which again undercuts the suggestion of a gift.
 - h) The parties are clearly having heated arguments over the course of the various message exchanges, making it more difficult to give what is said the same weight that would be applied to more carefully considered conversation.
- [47] I note that Ms. Benson did attempt to have a technologically savvy friend of hers testify to show that her messages were visible in their native electronic form. I did not allow her to call or advance such evidence in light of:
- a) her failure to provide a will say statement from this proposed witness, as required by the various case management orders;
 - b) her failure to list or produce the electronic information in its native form so that Mr. Levington could fully test this evidence;
 - c) her lack of a proper explanation for failing to comply with the Supreme Court Civil Rules, B.C. Reg. 168/2009 and orders in respect of the proposed evidence;
 - d) her failure to take up a March 2, 2022 invitation from Mr. Levington to have an independent expert evaluate the computers to confirm whether Mr. Levington did in fact send the contested messages;
 - e) Mr. Levington's evidence that he could no longer see the messages himself on his own computer; and
 - f) the prejudice to Mr. Levington in terms of not being able to properly prepare for the introduction of such evidence.
- [48] In sum, although admissible, the other factors discussed above causes me to give the contested messages less weight than might otherwise have been the case if they had been supported by expert evidence or other more credible evidence: Ball, para. 70.
- [49] Moving from the documents to the available third party evidence, Ms. Wilson testified that the respondent always tried to avoid being in the same room with Mr. Levington. However, the weight of this evidence is tempered somewhat by the fact that Ms. Wilson is friends with Ms. Benson and was clearly trying to support her as much as possible. That said, I do find that Ms. Wilson was generally truthful.
- [50] For the reasons expressed above and below, I find that Mr. Meyer's evidence should be accepted as well.

- [51] The inconsistencies in the parties' stories makes it difficult to accept either version. I conclude that neither was being completely forthcoming about the facts generally, or to the nature of their relationship specifically. I find that the most logical characterization of their relationship is as follows:
- a) Mr. Levington was clearly infatuated with Ms. Benson.
 - b) Ms. Benson did not feel the same way about Mr. Levington, but was more than happy to take advantage of his infatuation to secure assistance for herself, most notably the provision of \$80,000.
 - c) There was no gift at the time of the initial Contribution. Not even Ms. Benson alleges that there was a gift at this time. However, particularly given the absence of any detail about the terms of any loan, I find that the \$80,000 was in fact an investment at the time it was made.
 - d) In terms of the alleged oral conversation at Christmas, I do not accept Ms. Benson's version that she only accepted the \$80,000 out of fear. Again, she chose the option that would create the maximum risk for her, which is not logical.
 - e) The subsequent messages between the parties and to others do create some confusion as to the proper characterization of the \$80,000. However, (1) the messages collectively are at best ambiguous; (2) the weight that can be applied to these messages is lessened by the factors noted above; and (3) this "mixed messaging" appears to have largely occurred during the period between the much clearer evidence as to the original provision of the \$80,000 and the subsequent evidence of a 20% interest being formally transferred to Mr. Levington. The intention and legal position at those two bookend dates is far more important than the evidence between those dates.
 - f) By the time of the July 2020 meeting with the notary, I find that Ms. Benson must have concluded that the plaintiff was entitled to a 20% share in the Home. Whether this was the result of guilt, genuine affection, or a recognition that she had not satisfied the plaintiff's stated condition for the alleged gift, is largely beside the point - the transfer recognized was made for good consideration, being the Contribution.
 - g) I find that Ms. Benson did attend at Mr. Meyer's office, and signed the necessary transfer documents. The signature on the transfer documents is not so radically different from Ms. Benson's verified signature that it overwhelms the weight of the direct evidence from Mr. Levington, the inferences to be drawn from the messages, and, most importantly, the evidence from Mr. Meyer. Copies of the most readable signature from the transfer documents, and a signature from Ms. Benson's sworn affidavit dated June 1, 2022 follow:

TRANSFER DOCUMENT SIGNATURE

AFFIDAVIT SIGNATURE

- [52] Given Ms. Benson's allegation of forgery, I must review what a judge may do with respect to handwriting in the absence of expert testimony.
- [53] A trial judge may make their own handwriting comparison. However, courts have conditioned the use of this power on the trial judge issuing a self-instruction on the dangers of exercising it. In *R. v. Megill*, 2021 ONCA 253, the court stated:

The Governing Principles

- [84] At common law, proof of handwriting could be made by testimonial or circumstantial evidence. For example, a witness might testify that they saw the act of writing. Or they might give evidence of the circumstances leading up to or pointing back to the act of writing. In a similar way, a qualified witness may testify about the style of the handwriting which requires a comparison between known and the disputed writing: VII Wigmore on Evidence (Chadbourn Rev. 1978), §1991, at pp. 252-57.
- [85] The common law also permitted the trier of fact, without the aid of experts, to compare handwriting samples when a proved or admitted standard used for comparison with the disputed writing was already properly admitted as evidence for other purposes. No document was admissible merely as a standard of comparison with the disputed writing: *R. v. Abdi* (1997), 1997 CanLII 4448 (ON CA), 116 C.C.C. (3d) 385 (Ont. C.A.), at para. 15, citing VII Wigmore on Evidence (Chadbourn Rev. 1978), §§1992-1994, at pp. 257-64.
- [86] Under s. 8 of the Canada Evidence Act, R.S.C. 1985, c. C-5, handwriting may be proven by comparison, by expert or lay witnesses, of a disputed handwriting with one that has been proved to be genuine and which has been received in evidence for the purpose of comparison: *Abdi*, at para. 16.
- [87] Section 8 does not oust the common law rule. The section does not preclude a trier of fact from comparing disputed handwriting with admitted or proved handwriting in documents which are properly in evidence and drawing available inferences: *Abdi*, at paras. 22, 23 and 25.

[Emphasis added.]

- [54] In *R. v. Hunking*, 2016 ONSC 1749, the court stated:

F. The Principles Governing Handwriting Comparisons by the Trier of Fact

- [17] In a series of cases the Ontario Court of Appeal has affirmed that a trial judge as trier of fact may make handwriting comparisons between a known or admitted sample of handwriting and another document bearing handwriting, and find that both were written by the accused. However, the court has conditioned the use of this power on the trial judge's self-instruction on the dangers in exercising it. These cases include *R. v. Abdi* (1997), 1997 CanLII 4448 (ON

CA), 34 O.R. (3d) 499; 1997 CanLII 4448 (Ont. C.A.), R. v. Malvoisin, 2006 Can LII 33304 (Ont.C.A.), and R.v. Flynn, 2010 ONCA 424.

[18] In Abdi, 1997 CanLII 4448 Justice Robins for the Court stated:

In the appellant's submission, s.8 of the Canada Evidence Act ("the Act") requires that evidence with respect to the comparison of handwriting be given by experts or witnesses with particular knowledge of the writings of the accused. To allow the jury to compare handwritten documents without witness testimony as to the validity of the comparison, the appellant argues, is to turn the jurors into witnesses and deprive the accused of the right of cross-examination. As I noted earlier, the handwriting in the red address book is the appellant's.

Section 8 of the [Canada Evidence] Act provides:

8. Comparison of a disputed writing with any writing proved to the satisfaction of the court to be genuine shall be permitted to be made by witnesses, and such writings, and the evidence of witnesses respecting those writings, may be submitted to the court and jury as proof of the genuineness or otherwise of the writing in dispute.

.

Under s. 8, handwriting may be proved by comparison, done by expert or lay witnesses, of the disputed writing with a writing that has been proved to be genuine and which has been admitted into evidence for the purpose of comparison. The question is whether or not, in light of this provision, the trier of fact is entitled to compare the disputed handwriting with the admitted or proved handwriting and form an opinion thereon in the absence of any witness testimony as to the genuineness or otherwise of the disputed writing. Put another way, does s. 8 provide the only means for comparison of handwritten documents and thus preclude comparison by the trier of fact without witness evidence? If the trier of fact does not require such assistance, then the question is what caution need be given as to the dangers of engaging in an unaided comparison.

.

In R. v. Dixon, supra, the Nova Scotia Supreme Court, Appellate Division, held that the statutory provision allowed the comparison to be made by expert or lay witnesses "or without the intervention of any witnesses at all, by the jury themselves, or, in the event of there being no jury, by the court".

.

I agree with the conclusions reached in Dixon. In my opinion, the common law rule has not been ousted by s. 8 of the Act. This section does not preclude a trier of fact from comparing disputed handwriting with admitted or proved handwriting in documents which are properly in evidence, and drawing inferences therefrom. In these circumstances, a trier of fact may make the comparison in the absence of witness testimony as to the genuineness or otherwise of the disputed writing.

There is, of course, a potential danger in making unassisted comparisons and the judge's charge should reflect this danger. The jury should be reminded that it has no expert or other evidence relating to the writings and directed as to the care to be exercised in making the comparison. Any difficulties that a comparison may reasonably present in the light of the circumstances of a given case should be brought to the jury's attention. As well, the jury may require instruction on the quality of the handwriting exemplar, whether it is of sufficient length and clarity for comparison purposes and, depending on the nature of the facts and the charge, on other matters going to the weight that may be placed upon such a comparison. In cases where forgery or the like is alleged, expert evidence may well be essential.

[19] The matters on which a jury must be cautioned are the same as those on which a trial judge is to caution himself or herself as trier of fact.

[Emphasis added.]

[55] With those principles in mind, I reach the following conclusions about the handwriting. There is no doubt that the first signature from the notary's files has less detail than the second affidavit execution signature. However, this is not overly surprising given that the second was on a formal affidavit to be deposited in court, whereas the execution in the notaries office could be potentially be more "tossed off". Further, there are at least some similarities between the two signatures. The signatures share a long left leaning line on the "d" at the start of the signature, an "m shape" at the end of the first name, and a swooped "u shape" at the end of the second name.

[56] Particularly when coupled with the weight of Mr. Meyer's evidence, I cannot conclude that the signature on the transfer documents is a forgery.

[57] Logically speaking, if Mr. Levington were arranging to produce a forgery, one might reasonably assume that he would have trained his forger to carefully reproduce Ms. Benson formal signature. The fact that the transfer document signature is so simplified suggests that there was unlikely to have been a carefully designed plan to faithfully reproduce a detailed signature.

[58] Further, Ms. Benson's own theory about how the forgery throws a wrench into itself. Ms. Benson argues that the two signatures are wholly distinct, sharing absolutely no characteristics. But if that were so, this would be a extremely poorly executed fraud by Mr. Levington. Why would Mr. Levington go through all the trouble of hiring and training a sex worker to hold herself out as Ms. Benson, but then not bother to instruct the sex worker on the most important aspect of the fraud, being the accuracy of the forgery itself.

[59] There are also other factors pushing the Court away from Ms. Benson's forgery theory:

- a) There is simply no evidence of Mr. Levington hiring a sex worker to impersonate Ms. Benson;

- b) Such an impersonation plot would have been extremely risky as:
- i. It would normally have been expected that the notary would require photo identification, which would have immediately revealed any impersonation. As it turns out, the notary did not insist on seeing any photo identification, but this was outside his own usual practice. How would Mr. Levington have known that Mr. Meyer would relax his usual protocols on that particular day? (I note that Ms. Benson does not suggest that Mr. Meyer was a knowing participant in the initial fraud, although she suggests that he is now trying to cover up his incompetent practice).
 - ii. How or why would Mr. Levington have known that Mr. Meyer's first draft of the documents would show the split between the parties as 50/50? It is highly unlikely that Mr. Levington would have had the foresight to train the alleged sex worker to be ready to assert in the face of an error in the documents that they should only reflect an 20/80% split. Again, this would require "Ocean's Eleven" level- foresight, brilliance and criminality that I did not see any evidence that Mr. Levington possessed.
 - iii. Why would Mr. Levington have taken the risk that the mailed state of title certificate would reveal the fraud? Ms. Benson suggests that Mr. Levington must have intercepted the letter with the certificate from their mailbox, but how could he be sure that he would be home when this letter was delivered?
 - iv. Any impersonation would also have quickly been revealed when and if Ms. Benson came into the Mr. Meyer's office for any reason.
- [60] Ms. Benson relies on the fact that in her covert video Mr. Meyer refers to the fact that she had certain animal tattoos as a basis for remembering her, as she only obtained these animal tattoos after the alleged meeting. However:
- a) In his deposition, Mr. Meyer makes it clear that he relied on other characteristics in identifying her in January 2021, not just on the tattoos.
 - b) Ms. Benson has a very outsized personality, so it is not unusual that Mr. Meyer would remember her on this basis alone.
 - c) Ms. Benson has other tattoos, and so Mr. Meyer may have been (unduly) influenced by what he was seeing in front of him on her later visit.
 - d) Ms. Benson was very aggressive in the covert video, which may have put Mr. Meyer on the defensive, and caused him to push too far to identify relevant identifying characteristics.
 - e) As an insured professional, Mr. Meyer does not have a particularly compelling basis to lie in sworn testimony, even if he had failed to follow his standard protocols. Indeed, he would have much more to lose from being found to have lied to the Court.

- [61] As such, I find that Mr. Levington has established that Ms. Benson signed the transfer documents. With this fixed endpoint established, the earlier evidence fits more easily into place. Specifically, I find that the eventual decision by Ms. Benson to effect the 20% transfer supports Mr. Levington's position that his Contribution was an investment all along, rather than a gift.
- [62] Mr. Levington may have been loose with his language in messages sent in the interim period thereafter, but I find no unambiguous statement justifying a conclusion that the Contribution was a gift, or was converted to a gift.
- [63] For all these reasons, I find that the Contribution was intended to be an investment when made, and remained an investment at the time the transfer documents were voluntarily executed by Ms. Benson before the notary.

B. Declaration of Ownership

- [64] The proper conclusion on ownership largely falls out naturally from the finding above. However, it is important to be explicit about the legal basis upon which the remedies sought are granted.
- [65] The common law presumes bargains, not gifts: *Kerr v. Baranow*, [2011] 1 S.C.R. 269 at para. 19. Further, it is only the intention of the contributor at the time of the acquisition of the property that counts: *Ibid* at para. 25.
- [66] I find that Ms. Benson's evidence carries insufficient weight to rebut the presumption that the provision of \$80,000 by Mr. Levington was intended to be a bargain and not a gift. There would be no reason for Ms. Benson to complete the later transfer to Mr. Levington if the Contribution was in fact a gift.
- [67] I find that the parties attended at the notary in order to reflect that what had occurred at the time of the initial provision of the Contribution, which was properly characterized as a bargain pursuant to which Mr. Levington was entitled to recognition on title.
- [68] Under the Land Title Act, R.S.B.C. 1996, c. 250 [LTA]:
- a) indefeasible title is conclusive evidence at law and in equity that the person named in the title as registered owner is indefeasibly entitled to ownership of the land described in the title, absent fraud, forgery, resulting trust or certain other conditions which I have not found to exist here; LTA, s.23(2); *Freeland v. Farrell*, 2022 BCCA 99 at paras. 25, 42-43; and
 - b) there is no statutory requirement that a notary must see a photo ID in order to properly effect a transfer; LTA, ss.42-43.
- [69] As such, I find that Mr. Levington is entitled to the requested declaration of ownership.

[70] Mr. Levington also suggested that he would also succeed based on principles of unjust enrichment. I note that this cause of action was not well-plead, and I do not need to consider its validity in any event given my conclusion on the primary argument.

IV. CONCLUSION

[71] I declare that Mr. Levington holds a valid 20% share of the Home. Mr. Levington was content to transfer his share to Ms. Benson however. Ms. Benson signalled a desire to remain in the Home.

[72] In order to grant Ms. Benson an opportunity to continue to live in the Home, I grant Ms. Benson 120 days to pay Mr. Levington \$124,000 as the price for his share of the Home: PPA, s. 8, subject to the caveat below regarding the amount owing to the municipality. This represents 20% of the \$620,000 valuation (as the yard has not been cleaned). If this amount is paid, then any Certificate of Pending Litigation shall be removed from the property. Mr. Levington shall co-operate to ensure that title is transferred to Ms. Benson alone.

[73] If Ms. Benson fails to pay this amount, it is clear to me that the parties cannot manage the Home together: PPA, s.7. The Home this must be jointly listed for sale. The parties shall take steps to agree on a realtor, failing which the court may appoint one. I will remain seized of any issues that may arise in the course of the sale process.

[74] Subject to the next paragraph, the net proceeds of any sale will be distributed 20% to Mr. Levington and the balance to Ms. Benson.

[75] Either party is at liberty to pay out at any time the approximately \$18,000 owing to the municipality in order to avoid the effect of the tax auction. If this amount is paid by Mr. Levington, 80% of this amount shall serve either as (1) an additional amount payable by Ms. Benson to Mr. Levington on the buy-out alternative; or (2) alternatively, 80% of this amount will be a first charge in favour of Mr. Levington from any sales proceeds. If Ms. Benson pays the amount, then she will obtain a credit in her favour for 20% of this amount from any amount otherwise payable to Mr. Levington.

[76] If the parties are unable to agree on the costs implications of this judgment, they may make written submissions to the Court on the following schedule:

- a. Mr. Levington's Submission: 30 days from this judgment;
- b. Ms. Benson's Response: 30 days from receipt of Mr. Levington's Submission;
- c. Mr. Levington's Reply: 10 days from receipt of Ms. Benson's Response.

"The Honourable Mr. Justice Branch"

Source & reproduction note

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

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/22/21/2022BCSC2171.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/levington-v-benson-2022>

Prepared on 27 October 2026 · Esheria