

CANADA / JUDGMENT

Li v. Li

2017 BCSC 1312

COURT

Supreme Court of British Columbia

DECIDED

27 July 2017

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2017 BCSC 1312 Li v. Li

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Li v. Li,

2017 BCSC 1312

Date: 20170727

Docket: S160037

Registry: Vancouver

Between:

Shaoqing Li

Plaintiff

And

Xingzi Li a.k.a. Xing Zi Li a.k.a.

Withy Li and Minwoo Kim

Defendant

Before: The Honourable Mr. Justice Walker

Reasons for Judgment

Counsel for the Plaintiff:

B. Blake

Counsel for the Defendants:

T. Yu

Place and Dates of Trial:

Vancouver, B.C.

March 27-31, 2017

April 3-7, 2017

April 10-13 & 19, 2017

May 1-3, 5, 8-10, 2017

June 5-7, 2017

Place and Date of Judgment:

Vancouver, B.C.

July 27, 2017

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Introduction

- [1] This case involves a highly contentious and acrimonious dispute between a father and his daughter. At first blush, their dispute appears to concern money. Underlying it, though, are a daughter's festering resentment towards her father and stepmother resulting from her parents' divorce and her unwillingness to accept her father's marriage to anyone other than her biological mother and the birth of her stepbrother. In this section, I set out some of my findings of fact that are introductory in nature.
- [2] Mr. Shaoqing Li, the plaintiff, is a citizen and resident of China. He has sued his daughter and her husband in this Court for converting \$423,900 of his money and for failing to repay a loan of \$10,000 ("Loan"). Mr. Li speaks Mandarin. He does not speak, read, or write English. He was born in 1955 and was 62 years old at the time of trial. He is employed as a manager of an electrical factory in Dezhou, China. He has a grade 12 education, which he obtained in China.
- [3] Both defendants, Ms. Xingzi Li and Mr. Minwoo Kim, are residents of Canada. They reside in Langley, British Columbia.
- [4] Ms. Li is the plaintiff's daughter. She was born in 1981. She is a Canadian citizen. Ms. Li moved to Canada in August 2001, when she was 21 years old, to continue her university studies at Trinity Western University ("TWU"). She graduated from TWU in 2007 with a major in mathematics.
- [5] Mr. Kim is married to Ms. Li. He was born in 1976. Mr. Kim and Ms. Li met while they were both studying at TWU. They began dating, and eventually married, in Canada, in July 2010. Both Ms. Li and Mr. Kim communicate in English because neither speaks the other's native language (Mandarin and Korean, respectively).
- [6] Ms. Li calls herself "Withy Li" when speaking English. That name is shown in some of the documents in evidence. I shall refer to her as "Ms. Li" and to her husband as "Mr. Kim".
- [7] Ms. Li's biological mother is Yinfen Jiao. She was 61 when she testified at trial. Mr. Li and Ms. Jiao divorced in August 2003.
- [8] Following the divorce, Mr. Li remarried, to Ping Wei. She was 46 years old at the time of trial. They met in December 2000 and soon began dating. They decided to get married but could not do so until Mr. Li obtained a divorce from Ms. Jiao. Mr. Li and Ms. Wei moved in together on February 1, 2002. Ms. Wei became pregnant with their son, R.L., who was born on December 12, 2002. Mr. Li and Ms. Wei married in 2006.
- [9] In August 2015, when he was 12 years old, R.L. moved to Canada to live with his stepsister, Ms. Li, and her husband, Mr. Kim, in order to attend school in this country.
- [10] I will summarize the parties' competing version of events in the next several paragraphs.

- [11] Mr. Li claims that he sent over \$600,000 by wire transfer to three separate bank accounts at a branch of the Royal Bank of Canada in Langley ("RBC"), for the following specific purposes:
- (a) to fund R.L.'s school fees and living expenses while he lived with Ms. Li and Mr. Kim;
 - (b) to allow Mr. Li and his wife to purchase property in the Lower Mainland in which to reside if his plan to immigrate to Canada upon his retirement in 2017 was approved by the Canadian government; and
 - (c) to pay his daughter to sponsor him, Ms. Wei, and R.L. to immigrate to Canada under what he understood to be the Canadian government's immigration protocol knows as the "family reunification program" and to look after all necessary arrangements to facilitate their immigration.
- [12] One of the accounts at the RBC was a chequing account previously set up by Ms. Li for herself and Mr. Kim. The other two accounts were established by Mr. Li, for himself and for R.L., in July 2014 ("Mr. Li's RBC Account" and "R.L.'s RBC Account", respectively).
- [13] The bulk of the funds that he wired to Canada, Mr. Li says, represent the proceeds from the sale of real property held by himself and Ms. Wei in China.
- [14] Included within the sale of those assets was an apartment located in the city of Jinan, China. The parties refer to it by its unit number, "802", and I will do likewise. Mr. Li purchased 802 in 2002, when his daughter was 21 years old and attending TWU. He says that he registered title into her name for a number of reasons. Mr. Li wanted to provide comfortable accommodation for his elderly parents to live out the remainder of their lives. He was in the midst of a significant financial strain resulting from an expropriation of his real estate holdings by the Jinan municipal government that put his personal and corporate financial position at extreme risk. He wanted to protect what remained of his cash. At that time, Mr. Li also planned on his daughter inheriting 802 upon his death. He was worried about possible inheritance taxes being imposed by the Chinese government. If he registered the property in his parents' name or his, then either he or his children could face estate taxes.
- [15] Mr. Li also sought to avoid conflict between his daughter and her soon to be born stepbrother, R.L., over his estate assets. His plan was to make a separate provision for R.L. However, until his death, he intended to have complete control over 802 and its disposition. In other words, he could sell it at any time and use the proceeds as he determined in his sole discretion. Although he communicated his purchase of 802 to Ms. Li at a family gathering in the early part of 2003, celebrating what is known as the "Spring Festival", Mr. Li only told her that he bought it as a residence for his parents. He did not tell her of his overall plans and intention concerning the acquisition of 802 until several months later, in May 2003, when he needed his daughter's authorization to allow him to pay the tax on it and to obtain the title certificate.

- [16] Mr. Li's plans for 802 changed when he decided, in 2014, to immigrate to Canada with Ms. Wei and R.L. As I mentioned, their immigration was to be facilitated and sponsored by his daughter. He and Ms. Wei decided to sell the majority of their assets (including 802 and an apartment paid for and owned by Ms. Wei), and use the money to pay for R.L.'s education in Canada, their immigration and acquisition of property in the Lower Mainland, and, as noted, to pay \$150,000 to Ms. Li to help them.
- [17] Mr. Li claims that although Ms. Li agreed to this plan, unbeknownst to him, she converted a significant portion of the funds that he wired to Canada in performance of their agreement. He says that she took the \$150,000 payment but subsequently refused to act as sponsor and to help facilitate his family's immigration to Canada. Mr. Li did not know that R.L.'s RBC Account and Mr. Li's RBC Account were set up to show his daughter as a joint owner, nor did he know that Ms. Li's chequing account (also at the same RBC branch) was owned jointly with Mr. Kim. He only learned of the conversion when his daughter abruptly, and without warning, announced in early December 2015 that she would not act as sponsor and would not take any other steps to facilitate his family's immigration. He claims that in spite of the defendants' agreement to repay those funds, they have failed to do so.
- [18] Mr. Li also claims that Ms. Li and Mr. Kim have been unjustly enriched because they have used some of the converted funds to carry out renovations to their family home in Langley, to pay down their personal debt, and to acquire a townhouse in Langley ("Townhouse") registered in Ms. Li's name as an investment asset that has since increased in value. He seeks judgment for the funds that Ms. Li has converted, as well as a constructive trust remedy over the Townhouse on the basis that in light of her wrongful conduct, it would be unjust for Ms. Li to profit resulting from its increased value.
- [19] Mr. Li also seeks judgment for the amount of the Loan. He claims that the Loan, which he made to his daughter in June 2013, remains outstanding. The Loan was made to help her and Mr. Kim put together a down payment to purchase their home in Langley, and was to be repaid on demand.
- [20] In addition, Mr. Li says that without his permission, Ms. Li improperly took money that he placed in R.L.'s RBC Account to purchase a new vehicle and pay off some of her debt. He claims that her assertion that she paid it back is incorrect because she used Mr. Li's funds from Mr. Li's RBC Account to do so. The fact that she removed funds from R.L.'s RBC Account is not disputed by Ms. Li.
- [21] Neither Ms. Li nor Mr. Kim assert that 802 was a gift made in contemplation of death (or *donatio mortis causa*, which is made under the apprehension of death). Their defence is that it was an *inter vivos* gift.
- [22] Ms. Li provided an entirely different account of the nature, purpose, and effect of her father's acquisition of 802. With the exception of the Loan and the money deposited to pay for her stepbrother's school fees and living expenses in Canada, she claims that the money belongs to her because it was derived from the proceeds of sale of 802, which she maintains

was a gift to her. She denies that she converted any funds. Ms. Li also says that she received prior approval from her father to borrow money from R.L.'s RBC Account and that she has repaid it and the Loan with the sale proceeds from 802.

- [23] The presumption of advancement does not apply to transfers of assets from an adult parent to an adult child. The presumption of advancement is limited in application to transfers by parents to their minor children. The law presumes that the transfer of title of an asset to an adult child without consideration is held in trust for the parent (it is referred to as a "resulting trust"). The same approach is taken to bank accounts set up as joint accounts: *Pecore v. Pecore*, 2007 SCC 17 at paras. 22, 24, 37, 40, 46, 50, 52, 63; *Inch v. Stead Estate*, 2007 BCSC 1249 at para. 51; *Modonese v. Delac Estate*, 2011 BCSC 82 at paras. 142, 152. In considering whether the presumption of a resulting trust has been rebutted, the whole of the evidence must be considered: *Bergen v. Bergen*, 2013 BCCA 492.
- [24] Therefore, the onus to rebut the presumption of a resulting trust and to prove the gift falls on Ms. Li and Mr. Kim. They must establish, on a balance of probabilities, that 802 (and the proceeds from its sale) was in fact a gift that was made to, and received by, Ms. Li with Mr. Li's "full intention that [it] shall not return to" him: *Singh Estate v. Shandil*, 2007 BCCA 303 at paras. 24-27; *Read v. Rayner*, [1943] 2 D.L.R. 225 at 231 (P.E.I.S.C.).
- [25] For the reasons that follow, I have determined that Mr. Li did not gift 802 or its sale proceeds to Ms. Li. With the exception of a small amount of the funds necessary to pay for R.L.'s tuition and living expenses between August and December 2015, Ms. Li was not entitled to the proceeds that Mr. Li deposited in Canada (including the \$150,000 payment deposited into his daughter's chequing account). She was not entitled to borrow the funds from R.L.'s RBC Account.
- [26] This is not a case where Mr. Li has prevailed simply because Ms. Li and Mr. Kim were unable to rebut the presumption against advancement. I have found that Mr. Li clearly established that neither 802 nor the sales proceeds derived from it were intended as an inter vivos gift for his daughter.

Findings of Fact

- [27] In this section, I set out my additional findings of fact necessary to decide the case along with my analysis and determination of Mr. Li's claim. I will begin by setting out my assessment of the credibility of the parties and the witnesses called in their respective cases.

Overview - Credibility

- [28] I agree with the parties that the outcome of this case turns primarily on determinations of their credibility as well as that of various members of Mr. Li's family who testified (his sister, cousin, and mother), Ms. Jiao, and Mr. Kim's mother. The parties are adamant that their dispute is not the result of a misunderstanding between father and daughter. They collectively assert that this is a case where either the plaintiff or the defendants have

presented a fabricated account and have not provided truthful testimony. After reviewing all of the evidence, I have concluded that they are correct and this is not a case involving a misunderstanding.

- [29] Except for Ms. Li and Mr. Kim, all of the evidence was given through interpreters. This reinforced the necessity of considering all of it in relation to the objective documentary evidence, to evaluate external and internal inconsistencies, and to assess probabilities.
- [30] This approach to assessing credibility is discussed in the case authorities and academic literature: see, e.g., *Faryna v. Chorny*, [1951] B.C.J. No. 152 (C.A.), cited with approval in *F.H. v. McDougall*, 2008 SCC 53. In her reasons for judgment in *Grewal v. Grewal*, 2017 BCSC 573, Madam Justice Fleming summarized the applicable case law, as follows at paras. 52-53:
- [52] Of course, the court can accept some, all or none of the evidence of a witness. The correct approach to assessing credibility is well known and was articulated many years ago in *Faryna v. Chorny* [citations omitted]. There the court emphasized the fundamental test of credibility involves subjecting the witness's testimony to an examination of its consistencies with the probabilities affecting the case as a whole and shown to be in existence at the time. At 357, Justice O'Halloran stated:

In short, the real test of the truth of the story 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 conditions.

- [53] In *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296, leave to appeal ref'd [2012] S.C.C.A. No. 392, Justice Dhillon observed that determining credibility involves assessing the trustworthiness of the witness's testimony based on his veracity or sincerity and the accuracy of the evidence he provides. She summarized the factors to be examined at para. 186. They include the ability of the witness to resist the influence of interest to modify his recollection; whether the witness's evidence harmonizes with independent evidence that has been accepted; whether the witness changes his evidence during direct and cross-examination, or between examination for discovery and trial, or is otherwise inconsistent in recalling events; whether the witness's evidence seems unreasonable, impossible or unlikely bearing in mind the probabilities affecting the case; as well as the witness's demeanour.
- [31] In taking that approach to the evidence in this case, I found the objective evidence and the parties' conduct taken as a whole supports the veracity and reliability of the evidence adduced in Mr. Li's case. Notwithstanding the very able submissions of defence counsel, I did not find any meaningful inconsistencies in the account given by Mr. Li and his witnesses. For those that did exist (as opposed to those that were suggested), they were irrelevant or inconsequential, and to be expected in recalling events that span back many years in a case now fraught with a high degree of family conflict arising from Ms. Li's conduct in removing Mr. Li's funds and her treatment of her step-brother, along with the unrelenting and infectious antipathy that Ms. Li's mother continues to hold against Mr. Li.

- [32] Although Mr. Li was clearly upset with his daughter's conduct when testifying, he did his best to restrain himself (although he did express his frustration at what he thought were attempts to use an inaccurate translation of a document as a foundation for cross-examination). In all, I found that he sought to limit his evidence to the facts without embellishment or hint of exaggeration. The same was true for his other witnesses. In all, the evidence given by the witnesses in Mr. Li's case was reasonable, accorded with common sense (as well as the objective evidence), and was consistent with the probabilities affecting the case as a whole. I found the evidence of the witnesses who testified in his case to be forthright, candid, and highly credible.
- [33] On the other hand, there were many deficiencies with the evidence adduced in the defendants' case. I will provide a summary of them here, and give some further examples when discussing my additional findings of fact.
- [34] To begin with, the essence of Ms. Li's evidence - that 802 was a gift and she was entitled to the sale proceeds - does not accord with the overall context of historical events, the objective evidence, and the conduct of the parties and their family members.
- [35] Ms. Li's account also defies common sense and the probabilities. Ms. Li's evidence was marked by a number of internal inconsistencies with her trial, pre-trial, and discovery evidence. In hearing her evidence, I became satisfied that when confronted with a prior inconsistency or a proposition founded on common sense, she made up answers to questions put to her in cross-examination.
- [36] I am also satisfied that Ms. Li viewed her father as a continual source of funds to support her livelihood in Canada. She refused to accept that he encountered severe financial difficulties that constrained his ability to support her, and when that occurred, she sought various means to extract cash from her father even if it meant displacing her grandparents who were living at 802. I found her to be self-centred and motivated by money.
- [37] I accept that Ms. Li attempted, at different times, to overcome the anger she felt towards her father consequent on the breakup of her parents' marriage. From outward appearances, and for a time, her relationship with Mr. Li seemed to have greatly improved. But in taking on the care of R.L., Ms. Li took on more than she could cope with. Her lack of experience as a parent, her continuing resentment towards her father for separating from her mother, taking up a relationship with Ms. Wei, and fathering a child with Ms. Wei out of wedlock, her admitted jealousy over what she perceived to be her father's preferential economic treatment of R.L., and her distress (and at times, anger) resulting from her father's lack of approval of Mr. Kim, were more than she could bear.
- [38] When the time came for her to act on her agreement to facilitate the immigration, Ms. Li lashed out at her father, refused to act as a sponsor for his family, and insisted, after R.L. had lived with her for several months, that he be placed in home-care (with a stranger) without delay.

- [39] In the meantime, she had taken Mr. Li's money from Mr. Li's RBC Account and used it to benefit herself and Mr. Kim. She also retained the payment of \$150,000.
- [40] She also took money from R.L.'s RBC Account, without permission, in order to pay some of her debts and to purchase a \$63,000 vehicle. She later told her father that she had repaid R.L.'s RBC Account, but did not tell him that she used funds from Mr. Li's RBC Account to do so.
- [41] Ms. Li moved nearly all of the rest of the money that Mr. Li had wired to Canada into her own accounts, including a savings account that Mr. Li knew nothing about.
- [42] When her father discovered what she had done, he asked her for a repayment schedule (instead of immediate repayment). Mr. Kim responded, telling Mr. Li that they would pay it back. Ms. Li's response was that she would consult a lawyer. Neither of them honoured Mr. Kim's promise.
- [43] Mr. Kim's evidence is also fraught with difficulties. To begin with, he has no direct knowledge of the arrangements, including Mr. Li's intentions, concerning 802. Mr. Kim's understanding of any arrangement between his wife and her father comes solely from Ms. Li because he is unable to communicate with Mr. Li. Mr. Kim does not speak Mandarin and does not read Chinese characters.
- [44] Mr. Kim's evidence was also marked with inconsistencies.
- [45] In addition, Mr. Kim was unduly intransigent in his support for his wife's position. I found it significant that when Mr. Li's counsel sought to challenge his evidence with a bundle of key emails between Mr. Li and Ms. Li that favoured Mr. Li's version of events, Mr. Kim not only said he had no knowledge of them since he was seeing them for the first time in the witness box, he stubbornly refused to look at most of them despite being given a number of opportunities to read the English translations. He relented at one point, and did look at a few, but for those that he did, it was a momentary glance followed by a stern denial of their contents.
- [46] In one glaring instance, Mr. Kim denied having any knowledge of the contents of an email without even looking at it. I have extracted his exchange with Mr. Li's counsel during this part of the cross-examination:

Q Page 13?

A Same. No.

Q Same? No?

A Yeah.

Q Even without looking, you say no?

A No.

Q You're sure?

A I'm sure.

[47] Also, Mr. Kim would not provide responsive answers to questions aimed at revealing whether he had, despite not having seen them, been made aware of the emails or their contents from his wife. At one point, he was asked to look at certain emails in an attempt by opposing counsel to get him to answer a question to this effect. Mr. Kim refused to do so.

[48] I have set out below some other examples of Mr. Kim's approach to his wife's email communications with her father:

Q Did your wife tell you about these emails?

A I don't know, but can you state what it is about this conversation in the email?

Q It's right in the email.

A This is my first time seeing and then you're asking for questions, asking what - - you know me - - you know this one word she told me - - you asked me two questions.

Q Yes.

A This is my first time seeing. I don't know, what's inside of the talking? But somehow it was she told me - -

Q She told you - -

A I don't know, I haven't looked at the full document here, right? Email.

Q Do you need like five minutes to read?

A No.

Q You do not want to read?

A No.

Q And you deny you know it?

A No, I deny.

Q Are you sure you do not need five minutes to look through?

A No, I do not.

Q You do not?

A Yeah.

Q You do not want to read?

A I don't want.

Q All right, so page 15, you denied? You had no knowledge of these emails before today, correct?

A Yeah.

Q All right. Page 16. only one email. Before today, Mr. Kim, did you have any knowledge of this email?

A No.

Q No?

A No.

Q Not at all?

A This is email. I told you, on page 33 or something with tab. This is my first time seeing these email.

Q And nobody told you about this email?

A Why I have to see her email?

Q You just told me you don't read Chinese.

A No, you showed me the English version here.

Q Right, so nobody even mentioned about the contents of all these emails with you before today's date; is that correct?

A I just - - I don't know what you're talking about.

Q I 'm not asking you if you saw.

A You asked me that.

Q I asked if anyone mentioned the contents of these emails to you?

A I don't know, why is - -

[49] It was clear to me that Mr. Kim decided to protect his wife's version of events rather than attempt to answer, in a bona fide manner, what he thought could be potentially troubling questions and documents that were put to him by Mr. Li's counsel.

[50] Ms. Li's mother, Yinfen Jiao, presented as an overtly biased, caustic, and at times, vindictive witness who used every opportunity to chastise Mr. Li and blame him for all of her difficulties in her life, including the outcome of their divorce and her failed second marriage. She detests her former husband for leaving her and having a child while she and Mr. Li were separated but not divorced. Much of her evidence was both improbable and often defied common sense. Her testimony exposed a profound well of bitterness and hate that I am satisfied has unduly influenced her daughter's views towards her father. I have concluded that Ms. Jiao's antipathy towards Mr. Li since their divorce animated her evidence

and has also influenced the approach taken by her daughter in her evidence at trial, which in turn has cemented an irrevocable fracture between Mr. Li and his daughter. In summary, I assess Ms. Jiao's evidence as, at best, unreliable.

- [51] Mr. Kim's mother, Ms. An, who lives in Seoul, South Korea, gave evidence. She testified about a statement purportedly made by Mr. Li at a dinner that took place in Seoul three days before her son and Ms. Li participated in a religious marriage ceremony in that country. Ms. An was called to support the defendants' account at that dinner, Mr. Li stood up and announced that he had purchased 802 as a dowry for his daughter, which he would be giving to her in five years' time when she began a family.
- [52] There were several difficulties with Ms. An's evidence that caused me to conclude it was unreliable. First, Ms. An does not speak Mandarin or English. Whatever she may know of what Mr. Li said during that dinner comes indirectly from her son, as whatever Mr. Li said during dinner was translated from Mandarin into English by Ms. Li, and then from English into Korean by Mr. Kim. More problematic, however, was the contrast between Ms. An's lack of recollection of certain basic facts and her very precise recollection of details favouring the defendants' version of events at the dinner. Ms. An gave a very detailed and what appeared to be a scripted account of the dinner and of certain events that evening leading up to it. She was trembling when giving her evidence. She was clearly nervous and anxious, which I have considered and rejected as the cause of her problems with her recollection. After considering all of the possibilities, my assessment is that she recounted by rote what had been impressed upon her to say.
- [53] To summarize, I found the evidence adduced in Mr. Li's case was credible, reliable, and consistent with the objective evidence, common sense, and the probabilities. I prefer his evidence and those of his witnesses overall.

Events Leading up to the Purchase of 802

- [54] Mr. Li moved to Jinan from the city of Dezhou in 1993, where he worked as a manager in an electrical factory. Dezhou is a remote city where the power plant is located. He established and operated a renovation and decoration business in Jinan. Mr. Li's position in Dezhou was held open for him for a number of years while he ran his business in Jinan. He made a success of his business, so much so that he decided to acquire other properties for investment purposes in Jinan with the assistance of other investors who loaned him money. Unfortunately, thereafter, Mr. Li's main property where his office buildings were located was expropriated when the local government decided to widen a road. The buildings were eventually torn down in approximately March 2003. Not only were Mr. Li's property acquisition plans dashed, he faced financial ruin because of the insufficient amount of compensation previously offered to him (and others whose property was expropriated) by the City in 2002. Local protests by affected property owners led to an increased amount of compensation, which was eventually paid to him, but it still fell far short of the actual value of his expropriated property. Mr. Li was highly stressed during this period and his health

suffered significantly. He became depressed because he saw the fruits of nearly 10 years' work lost. His efforts to challenge the compensation in court in China were unsuccessful. He accepted a payout that left him with significant debt.

- [55] Mr. Li was effectively separated from his first wife, Ms. Jiao, once he moved from Dezhou to Jinan in 1993. Even though Ms. Jiao's parents and other family members resided in Jinan, she did not move to Jinan with Mr. Li in 1993 or when she retired from nursing in 1997. Instead, she remained in Dezhou, where she continues to reside. His marriage to Ms. Jiao in 1980 was arranged by their parents. They are first cousins, which, according to the evidence, is as problematic in China as it is in Canada.
- [56] Mr. Li met Ms. Wei at a trade conference in December 2000. He hired her to work for his company as its accountant in May 2001. Their relationship developed quickly as they each realized they had found their "life partner". Theirs was no tawdry affair as Ms. Li and her mother alluded to. They fell in love. They decided to marry after Mr. Li obtained a divorce from Ms. Jiao. In the meantime, and until the divorce could be obtained, they made vows to each other, in a ceremony in front of their close friends, to honour and support each other for life. They moved in together in February 2002. Ms. Wei became pregnant with R.L. and, as mentioned, gave birth to him in December of that year.
- [57] Once they began living together, and before R.L. was born, Mr. Li and Ms. Wei discussed the need for him to buy a place for his aging parents to live and to attend to his estate planning, particularly given the health problems he was suffering due to the expropriation. The result of those discussions was Mr. Li's plan to purchase 802.

Purchase of 802

- [58] Mr. Li's acquisition of 802 occurred in October 2002, prior to R.L.'s birth. He used the compensation funds that he received from the City of Jinan to do so. Mr. Li did not use the compensation payment to pay off his debts to his investors and others. He wanted to protect his cash by purchasing 802, which, as I have noted, would also provide a comfortable home for his elderly parents to live. He wished for them to move to Jinan to be closer to him and so that he could better look after them. Another part of his plan involved estate planning. His intention was also to avoid disputes between his two children on his death. He would register title to 802 in his daughter's name. His plan was for his daughter to inherit 802 on his death, but until that occurred, he had complete control over its disposition. His plan was also to obtain and register title to a separate property for his son at a later date.
- [59] Mr. Li thought that if he could recover from the effects of the expropriation, he could generate enough cash from his business to pay off his debts, which he did over time, until he paid them off in full in 2007.

- [60] Ms. Li was living in Canada attending TWU (since September 2001) when Mr. Li purchased 802. She knew nothing of the purchase until the early part of the following year, when Mr. Li told her during a family gathering in China (to celebrate what is known as the "Spring Festival") that he had purchased 802 as a home for his parents to reside in.
- [61] Later, in May 2003, he told Ms. Li that he had registered title to 802 in her name. Since Ms. Li was the registered owner, Mr. Li needed his daughter to sign an authorization in his favour so that he could pick up the title certificate and pay a deed tax. The local authorities would not release the title certificate to him otherwise. It was at that time that Mr. Li explained to Ms. Li the other reasons for the purchase (which I have previously described).
- [62] In *Pecore*, the Court noted, at para. 41, that one of the factors to consider when determining if the presumption against advancement has been rebutted, is whether the adult child is a dependant at the time and, if so, the degree of dependency. In submissions, Ms. Li argued that her economic dependency on her father when he purchased 802 was a strong factor to consider in rebutting the presumption of advancement. I have considered that factor, together with the others discussed in *Pecore*. Even though Ms. Li was attending TWU at the time and dependent on her father for financial support, I do not find that dependency supports the defendants' case because Ms. Li was otherwise supported by her father in any event. She was fully supported by her father then and for several more years.

Events Subsequent to the Purchase of 802

- [63] Mr. Li renovated 802 to accommodate his parents. They moved into it before the end of 2002.
- [64] Ms. Wei also used her own funds (together with mortgage financing) to purchase a separate apartment in Jinan as an investment. She held title to the apartment.
- [65] Mr. Li told Ms. Jiao about his purchase of 802. He made her aware that since he purchased it with the compensation funds from Jinan, he still had significant debts.
- [66] Mr. Li had sought a divorce from Ms. Jiao when he moved to Jinan in 1993. At that time, they decided to hold off out of consideration for Ms. Li who was a young child. He did later press for a divorce, but Ms. Jiao declined. He held no animosity towards Ms. Jiao and attempted to remain on friendly terms with her. Their daughter knew nothing of their marital discord. When Mr. Li eventually insisted on a divorce in 2003, there were no custody issues as Ms. Li was living in Canada and attending TWU. He told Ms. Jiao that if she did not agree to a divorce, then he would proceed to court to have their marriage declared void. She agreed and their divorce was formalized in August 2003.
- [67] Ms. Jiao did not make any claim for an interest in 802 as part of the divorce settlement. Her stated aim was to ensure that she was not burdened with any of Mr. Li's debts (which exceeded 2 million RMB). He agreed. He filled out pre-printed divorce documents identifying ongoing marital conflict as the basis for the divorce. Ms. Jiao was to retain the apartment (and its contents) in Dezhou where she was residing. Mr. Li would take only his personal effects. Ms. Jiao received a further benefit from the divorce. Mr. Li agreed in the

divorce agreement to pay "child support" to Ms. Jiao in the amount of 2,000 RMB per month, until Ms. Li was "independent", even though Ms. Li was living in Canada at that time and otherwise fully supported by payments from her father. The divorce agreement did not mention their oral agreement that Ms. Jiao was not responsible for any of Mr. Li's debts or the vehicle that Mr. Li had purchased for Ms. Jiao earlier in the year. Nevertheless, the parties acted in accordance with their oral agreement.

- [68] RMB is the official currency of China. It is also referred to as Yuan. The parties have agreed that the exchange rate of RMB to Canadian dollar varied over time and ranged between approximately five to six RMB per one Canadian dollar.
- [69] At trial, and although seemingly intent on offering testimony supporting her daughter's claim that 802 was purchased and given to her daughter as a gift from the outset, during an emotional outburst in which she chastised Mr. Li with a number of unflattering and derogatory epithets, Ms. Jiao testified to the contrary, insisting that she always had an interest in 802 because it was matrimonial property, and at one point referred to it as her property. As I observed in an earlier section of these reasons, I found her evidence to be motivated by her complete disdain for Mr. Li, which caused her to provide a distorted and entirely unreliable account of her understanding of Mr. Li's acquisition of 802, the manner in which the divorce was granted and her participation in it, and as well, to blame her current financial position as well as her failed second marriage all on her ex-husband.
- [70] Ms. Li was kept in the dark about her parents' marital problems, even as a young adult attending school in Canada. She first learned of her parents' divorce in late 2003 when her mother, who had only then learned of Mr. Li's relationship with Ms. Wei and of their child, told her daughter about it.
- [71] Given the manner in which the news was relayed to her, Ms. Li was shocked and upset. She testified that she flew to China in the spring of 2004 with the express purpose of confronting the "woman who broke up" her parents' marriage, and "to punch her in the face". She did not convey her anger to her father at that time as he drove her to meet Ms. Wei and R.L. Ms. Li admitted that when she first encountered Ms. Wei standing at the front door of her apartment holding R.L. in her arms, she quickly relented. Until December 2015, Ms. Li's attitude towards Ms. Wei remained, at least on the surface, polite.
- [72] In addition to being unaware of her parents' marital troubles and separation until 2003, Ms. Li was not told about her father's financial difficulties resulting from the expropriation by the City of Jinan until he told her in 2006 that he did not have the money to pay her tuition for her final year at TWU (commencing in the fall of that year). Until that time, Ms. Li had assumed that her father was, as she put it, "rich". Mr. Li had looked after all of her financial needs throughout her schooling in China and Canada.

- [73] Ms. Li was therefore taken aback when her father told her that he could not afford to pay for her tuition due to his financial situation. Ms. Li did not know that in approximately May 2006, her father had sold an apartment unit that he had acquired (as his financial situation improved) in order to provide for her continued support. By his estimate, Mr. Li had paid at least \$270,000 to support his daughter while she attended school in Canada.
- [74] In her evidence, Ms. Li disputed that amount and suggested her father embellished the figure. Even so, by her own estimate, he paid at least \$150,000 to support her since she moved to Canada in 2001.
- [75] Ms. Li did not readily accept the news from her father and was unhappy with his suggestion that she should sell her Nissan Altima vehicle that he previously bought for her new in 2003 for \$30,000. Ms. Li did not appreciate that her father bought that vehicle for her with borrowed funds. When Mr. Li made that suggestion, Ms. Li and Mr. Kim were living together in a one bedroom apartment. Ms. Li then "sold" her vehicle to Mr. Kim for \$15,000, who had been driving it in any event. Mr. Kim obtained the funds from his parents. Ms. Li made it clear in her evidence that she continues to be unhappy that her father did not provide her with funds at that time, and instead forced her to sell her vehicle.
- [76] Friction also occurred between father and daughter in May 2007 when Ms. Li told her father that she would not come back to China to see her grandfather who was suffering from terminal cancer. She was looking for work and was concerned that if she did not secure employment, she would have to return to China. Mr. Li thought his daughter was insensitive because she did not ask about her grandfather's health.
- [77] Through his efforts, Mr. Li was able to repay his debts, including those he incurred to support his daughter's studies in Canada, in the first half of 2007. He was required by his employer at the power plant to return to Dezhou to maintain his job. In June 2007, he returned to Dezhou with Ms. Wei and R.L. They lived in a company dorm. Mr. Li's parents continued to reside in 802.
- [78] When Ms. Li graduated from TWU, she was without work. Until she found employment, she was in need of funds and asked her father if he could sell 802, as an advance on her inheritance, at a time when Mr. Li's father was very ill and receiving medical treatment for terminal cancer. Ms. Li telephoned her father from Canada in July 2007 and proposed that if he sold 802, he could achieve two purposes: he could obtain the funds to help pay for her grandfather's medical treatments and also assist her financially. Her suggestion was firmly and emphatically rejected by her father. Mr. Li received her call and the request while he was with his father in the hospital. He was angry and upset at what he perceived to be a heartless request, and asked her, rhetorically, if she was suggesting that her grandparents be put out on the street because they would be without a home if 802 was sold. He made it clear that the disposition of 802 was his to decide during his lifetime, telling his daughter, "As long as I'm alive, don't even think about 802." Nothing further came of her suggestion. It was dropped.

- [79] Mr. Li also told his daughter that she should move back home to China if necessary to find work and that he would pay for the plane ticket. She bridled at the idea. Nonetheless, Mr. Li wired his daughter 10,000 RMB to help her cover her expenses. At trial, Ms. Li expressed her resentment over her father's lack of financial support at that time. Describing it as the worst time of her life, Ms. Li failed to see then, and still does not see now, that her father could not continue to provide ongoing and unlimited financial support.
- [80] Mr. Li's father passed away in December 2007. Mr. Li's mother remained living in 802. Mr. Li moved into the apartment with Ms. Wei and R.L. to live with his mother. Mr. Li commuted between Dezhou and Jinan. Ms. Li did not attend her grandfather's funeral.
- [81] Even though she maintains she has owned 802 from the outset, Ms. Li never complained that her grandparents, her father, Ms. Wei, and R.L. lived in the apartment.
- [82] Mr. Kim graduated from TWU in 2008. He and Ms. Li travelled to China to meet Mr. Li's family. Mr. Li was not enamoured with Mr. Kim, and thought him to be a dreamer who aimed high without a corresponding work ethic. Another of his concerns was Mr. Kim's age - he is six years older than Ms. Li. He thought his daughter could do better. Later, when Mr. Li learned that Mr. Kim and his daughter wished to get married, he was unhappy and let his daughter know of his concerns for her future. Although he told her that he would not stand in the way, and only wanted the best for her future, his expression of concern aggravated his relationship with his daughter. So, too, did Ms. Li's refusal to allow Ms. Wei and R.L. to attend the wedding ceremony. Ms. Li testified that she became so angry with her father that she decided to get married in Vancouver in a civil ceremony. The manner in which she gave her testimony suggested that she married Mr. Kim in Canada out of spite. While her anger may have animated Ms. Li's thinking, it was clear to me, from Mr. Li's evidence along with certain admissions made by both Ms. Li and Mr. Kim, that they got married at that time to facilitate Mr. Kim's immigration to Canada (Ms. Li had, by then, become a Canadian citizen).
- [83] Later, when Ms. Li and Mr. Kim decided to participate in a formal church ceremony in Korea at the request of his parents, Ms. Li continued to refuse her father's request for his wife and R.L. to attend the wedding ceremony. Through the intervention of his sister, Mr. Li was persuaded to attend the ceremony without them, and flew to Seoul with members of his family and Ms. Jiao in October 2012.
- [84] Much was said in closing argument about statements purportedly made by Mr. Li at a pre-wedding dinner in Seoul concerning the disposition of 802. I do not intend to review the evidence in detail. I accept that when Ms. Li married Mr. Kim in Canada and at the ceremony in Seoul, Mr. Li's intention was for his daughter to inherit 802 on his death, subject to his right to control and even to dispose of the property for his benefit during his lifetime. He made no promise, as Ms. Li described, of a dowry of 802 in five years' time at the dinner. I found Ms. Li's account of the event defies probabilities. For example, according to their version of events, neither Ms. Li nor Mr. Kim thanked Mr. Li for moving forward in time the delivery of what can only be construed as a generous high-value gift of 802 coupled

with a cash gift of 20,000 RMB that Mr. Li brought with him to Seoul. I found their explanation - that they had previously thanked him in private - to be lacking in credibility. Also, the purported acceleration of the gift of 802 (in five years' time as opposed to Mr. Li's death) coupled with his cash gift is, I find, at odds with their complaints over what Ms. Li suggested in her evidence was Mr. Li's seeming lack of contribution towards the wedding in comparison to that made by Mr. Kim's parents. I accept that Mr. Li told his daughter that the cost of her education in Canada was effectively her dowry.

- [85] Mr. Li also brought cash from other family members.
- [86] The suggestion that Mr. Li told everyone assembled at the pre-ceremony dinner that 802 was his daughter's dowry that he intended to give to her in five years' time is also inconsistent with the notion that 802 was a completed gift from the outset, and instead supports the notion that Mr. Li continued to have control of 802 during his lifetime and that its disposition was entirely subject to his discretion and control.
- [87] Mr. Li's intention concerning the disposition of 802 remained unchanged during the summer of 2014. I will go on to discuss my findings concerning that change, but for now, it will suffice for me to say that I reject the defendants' argument that when Mr. Li purchased 802 in 2002, it was a completed gift to his daughter.
- [88] Also inconsistent with the notion that 802 was gifted from the outset is one of Ms. Li's submissions in closing argument that the gift of 802 "completed" when Mr. Li wired the proceeds from its sale in 2015.
- [89] With time, the relationship between father and daughter improved. No doubt Mr. Li's attendance at the ceremony in Seoul helped. So did the cash gift that Mr. Li gave his daughter and Mr. Kim as a wedding present. As well, and at his daughter's request in June 2013, Mr. Li did not hesitate to wire the Loan proceeds to Canada to give her the remaining funds that she needed to buy her home in Langley.
- [90] Mr. Li encouraged his daughter to welcome R.L. as a member of the family. He emphasized his love for her as his daughter. Their communications improved both in quality and frequency.
- [91] The two of them discussed the prospect of R.L. moving to Canada to live with Ms. Li to attend school. Mr. Li's thinking was that R.L. should do so when he graduated from junior high school in 2018.
- [92] Mr. Li raised the plan of sending R.L. to study in Canada, when he graduated from junior high school during a post-wedding family reception in China in October 2012. Mr. Li, as well as Ms. Wei and certain members of Mr. Li's family, discussed with Ms. Li her readiness to take on a child, especially since she had no experience raising children of her own and would likely have her own family by the time that R.L. would move in with her. Convinced that she was willing to take on the task, Mr. Li and Ms. Wei agreed to send R.L. to Canada to start school in September 2018.

- [93] Mr. Li thought that he could raise the money necessary to pay for R.L.'s school fees and living expenses from rental income he received from properties he owned in China and by saving some of his salary.
- [94] I accept Mr. Li's evidence, and those of other witnesses called as part of his case, that Ms. Li subsequently proposed, after she purchased her house in Langley in June 2013, that R.L. come to Canada sooner, when he graduated from elementary school. Mr. Li and Ms. Wei considered the proposal, did some research on the internet for commentary about the best time to send young children overseas to study, and ultimately agreed. They had also determined that they could raise the money to deposit in a bank account for R.L. in an amount sufficient to satisfy Canadian immigration authorities that his tuition costs through to the completion of grade 12 were covered. To do that, Ms. Wei sold her apartment and placed 1 million RMB in a bank account set up for R.L. in China.
- [95] On March 29, 2014, after Ms. Li returned to Canada from a trip to China, which included a visit with Mr. Li's family where the subject of R.L.'s study in Canada following elementary school was discussed, she sent a picture via text message to her father showing him the bed that she had bought for R.L. In her testimony, Ms. Li denied purchasing the bed for R.L., and suggested that it was bought from a friend who happened to be selling it. I found her evidence to be entirely without credibility. It was part of her ongoing attempt to distance herself from any suggestion that she invited and welcomed R.L. to live with her. In her text message to her father, which she sent in the midst of their communications about her efforts to obtain her father's "super visa" to Canada, she wrote, "I'm at a friend's house. I'll call a bit later". She attached a photograph of a bed with bedding, stating underneath the picture:
- a bed I bought for [R.L.].
- [96] With his daughter's help, Mr. Li applied for and obtained a "super visa" to visit Canada, which would permit him to stay in Canada for longer periods of time.
- [97] In closing submissions, Ms. Li and Mr. Kim argued that it made no sense for Ms. Li to offer to take in R.L. at that time because Mr. Kim was unemployed. Why, they say, would they saddle themselves with more expense? The submission misses the point that taking R.L. could be an economic benefit to them. From her lack of experience in not having raised children, Ms. Li thought that it would not cost much more than the \$300 to \$400 per month that she and Mr. Kim incurred for their living expenses to look after R.L. Her father, Ms. Wei, and Ms. Li's paternal aunt (whom she is close to), were surprised at what seemed to them to be lower costs of living in this country. Mr. Li insisted that he pay his daughter a greater sum. During their discussions, Mr. Li proposed to pay his daughter \$650 per month for R.L.'s living expenses, and told Ms. Li that whatever she did not spend on R.L. in a month, she could keep.

- [98] Mr. Li wired \$20,000 to his daughter's chequing account at RBC for R.L. in early May 2014. Of that sum, \$13,500 was designated to pay for R.L.'s tuition. The remainder was to pay for his monthly living expenses for 10 months starting from September 2015 and concluding in June 2016. Ms. Li also dealt with the school officials in Langley. Through her persistent efforts, Ms. Li was able to obtain approval for her to act as R.L.'s custodian while he lived with her in Canada, without the necessity of either of his parents being present in the country.
- [99] Some of the witnesses postulated that Ms. Li agreed from the outset to accommodate R.L. as part of a plan to have Mr. Li send his money to Canada so that she could convert it for her own use. I am unable to determine when she first decided to take his funds for her own benefit and the benefit of Mr. Kim. Nor do I view it as a finding that must be made. I do find, however, that at certain times, Ms. Li was motivated by the thought that establishing better relations with her father would serve to minimize any potential impediment to her hoped-for inheritance of 802. It was clearly apparent to me that Ms. Li is highly motivated by money. When she and her father first discussed R.L. living with her, he made it clear that he would pay her what Ms. Li perceived to be a more than ample sum to do so without the necessity of accounting for it.

Change in Plan for 802 and Immigration to Canada

- [100] Mr. Li's plans for himself, his family, and his property (including 802) changed once he visited Canada for the first time in the summer months of 2014. He visited his daughter and Mr. Kim in Langley in order to see the place where R.L. would live, and to get a sense of the area where R.L. would be attending school. Also, Mr. Li was approaching retirement and thought that he might apply to immigrate to Canada under the federal government's investor program (known as "PNP") in order to live closer to his children. Upon visiting with immigration consultants in the Lower Mainland, he realized that the cost was, at least in his mind, prohibitive.
- [101] In July 2014, before Mr. Li finalized his plans to immigrate to Canada, he attended at the RBC in Langley with his daughter, where she maintained her chequing account. As I have mentioned, his purpose was to open two accounts, one for himself and one in which to deposit funds in order to pay for R.L.'s tuition and living expenses while he lived with his stepsister. Mr. Li does not read English and did not appreciate at the time that when his daughter signed the account application documents she did so as a joint owner of both accounts. Mr. Li relied on Ms. Li's translation of the documents when he signed them. He also relied on his daughter's advice for the best means in which to wire money from China to those accounts. He received two separate bank cards, one for R.L.'s RBC Account and the other for Mr. Li's RBC Account. He was also given bank documents for each account that, although written in English, clearly showed on the front page of each account under the name of the account holder, R.L.'s name on one account and Mr. Li's on the other. Ms. Li's name was not shown in the sections describing the account holder. The bank also gave him

separate banking cards for each of the two accounts. Mr. Li let his daughter have the online banking password for each account.

- [102] In his discussions with her, Mr. Li authorized Ms. Li to supervise and manage R.L.'s account. He told her that she could invest some of the funds in R.L.'s RBC Account and keep any profit that she made, but must not erode the principal. He also understood that in the following year, Ms. Li would have to withdraw funds from R.L.'s RBC Account to pay for R.L.'s tuition and living expenses. She could also use online banking to check on the status of both accounts so as to ensure that the money he wired to Canada was deposited in them. Mr. Li did not give his daughter authorization to access funds from Mr. Li's RBC Account.
- [103] I reject the defendants' submission that Mr. Li understood that the accounts were set up as joint accounts. The most he thought he did was to give his daughter authorization to manage R.L.'s RBC Account and the authority to pay legitimate school and living expenses from it and to invest some of the funds in the account in mutual funds with the RBC.
- [104] With Mr. Li's approval, Ms. Li did invest some of the funds in R.L.'s RBC Account in mutual funds with the RBC. When the mutual funds were sold, the account suffered a small loss.
- [105] Mr. Li's visit with his daughter and Mr. Kim that summer was not without conflict, as Ms. Li objected to what she viewed as her father's continued efforts to "force" her to embrace R.L. as a brother. Mr. Li did not help matters with his overt displays of unhappiness with Mr. Kim. There were times that Ms. Li questioned why her father wished to immigrate to Canada instead of relying on his super visa for extended visits.
- [106] One of the points raised by Ms. Li to support her claim that 802 was a gift to her is an event that occurred when Mr. Li was at her home in the summer of 2014. When she asked her father, at that time, to prove to her that 802 was still registered in her name, he had Ms. Wei text him (from China) a photograph of the title certificate. She asserts that Mr. Li did that to confirm that she continued to own 802.
- [107] Ms. Li's submission, however, overlooks the context in which that event occurred. It took place before Mr. Li decided to immigrate to Canada under what he understood to be the Canadian government's "family reunification program" and his decision to sell his assets in China, including 802. He was considering the possibility of immigrating under the PNP program at the time (which required \$200,000 of investments to be made in Canada) and wanted his daughter to obtain information about the program and its requirements for him.
- [108] As well, the event occurred in the midst of an argument between Ms. Li and her father. As noted, all had not gone smoothly with Mr. Li's visit. His unhappiness with Mr. Kim continued to be a source of friction between Mr. Li and his daughter. Ms. Li was also still upset over her parents' divorce. Mr. Li and Ms. Li had a verbal confrontation one evening when Mr. Li rose late at night to use the washroom and found his daughter and Mr. Kim up late watching soap operas on television. Mr. Li expressed his concern that they were up so late when his daughter had to be at work the next morning. Tension mounted as Mr. Li's

displeasure with Mr. Kim increased.

[109] This was at a time when Mr. Kim was unemployed. Ms. Li's anger at her father's relationship with Ms. Wei rose to the surface. She swore at her father, accused him of defrauding her, and said, "If Kim ever has extra-marital affairs, that's because he's - - he's got influence from you."

[110] When Mr. Li asked his daughter a few days later if she had obtained any further immigration information for him, she snapped at him, telling him that she was too busy. At that point, Mr. Li expressed his concerns to his daughter. His evidence is set out in this extract. The reference to "Xingzi" is Ms. Li's Chinese name:

A couple of days later, I asked Xingzi, I said, "Have you found the information?" Again Xingzi said that she was busy. I said, "Xingzi, you watch a soap opera so late till midnight, and you said you're busy. That's how you're busy?" And I said "I have spent over 2 million for you to study overseas. You every day wearing some brand named clothing, but your dad, every day wears something only worth about dozens of RMB/yuan. When I did my estate planning I first thought about your interests, and purchased the property registered under your name, so what did I do wrong to you? You've been working for seven/eight years. Did I ever ask you for one penny?"

[111] It was in those circumstances that Mr. Li obtained a copy of the title certificate to 802. From his remarks, Ms. Li continued to understand that she would inherit 802 on her father's death, subject to his right to deal with or dispose of it during his lifetime.

[112] The next day, Ms. Li obtained some information from the Immigration Canada website and forwarded it to her father to review.

[113] The relationship between father and daughter did improve, at least as far as Mr. Li was convinced, over the course of the summer. During his visit, Ms. Li and Mr. Kim took her father on trips to Banff and the Sunshine Coast. Yet, and as I will describe later, without his knowledge and permission, she and Mr. Kim essentially charged him for hosting him by paying off debt they had incurred to do so by withdrawing funds that Mr. Li later wired to Mr. Li's RBC Account.

[114] Once Mr. Li decided that the cost of the PNP program was too high, Mr. Li and his daughter discussed the prospect that he and his family could immigrate to Canada in what he understood from his daughter to be the federal government's family reunification program. The seeds of the change in his plan were sown by Ms. Li. Mr. Li explained it in this way in his evidence:

When we had argument she also mentioned, Xingzi also mentioned that she wanted to take me to Vancouver Island too for sightseeing, but now if you don't want to go, so we won't go. So the following day she took me to the Vancouver Island for sightseeing. We stayed there for two or three days or three or four days. I don't remember exactly. After we came back, like a couple of days after we came back, when we were having dinner together, Kim, I and Xingzi, the three of us were there. Kim [sic - Ms. Li] said, "Dad I checked. I checked the official - - on the information on

the official website, my younger brother would be able to come. I, alone can sponsor seven people."

[115] Mr. Li was concerned to hear from his daughter that she may not be able to sponsor R.L., but she quickly determined that she could. In this extract from his evidence, the reference to "Auntie Wei" is a name that Ms. Li used for Ms. Wei:

She just said, "You just wait for me to do the family reunification immigration for you." And I asked her, "With our family situation as is, - can we do that?" She said, "Yes, you and Auntie Wei both can - - can do that." She said, "Maybe my younger brother cannot, would have some problem." And I said, "It's impossible the government would have a policy like that, only the adults can come, and the child cannot come. Do they want- - want us to leave the child alone in China?" Xingzi then said, "I'll go find more information.

Two or three days after we came back from the visit in Vancouver Island, during a dinner, when I came, and Xingzi, were all present, she told me that she has found the information, that her younger brother would also be able to come under a family reunification immigration. That she alone would be able to sponsor seven people. "There would be no problem with your whole family to come as a family reunification class immigrants." I said it's great.

[116] Mr. Li was told by his daughter that applications for the program were taken on one day per calendar year, in December, and that it took up to four years for the application to be approved. He understood that R.L.'s visa would first need to be obtained, and also that Ms. Li would have to act as a sponsor for him, Ms. Wei, and R.L.:

So I said, "Xingzi, so what's your specific plan?" She said, "I'm not going to do this this year. I will have to do a super visa for my mother. I'll wait to 2015. I will apply, make the application for you." The application date allowed is December 2nd of each year. But she says, "You can purchase the house in advance, and then after you are retired in 2017, you can move to Vancouver to live here, waiting for the approval of your immigration status." And she says, "the time it would take for immigration application to pass is two years to process within Canada, and then it would take another one-and-a-half years to two years verified by the Canadian Embassy in China, so give it a good four years to prepare."

[117] Mr. Li told his daughter and Mr. Kim that he would need to purchase property in the Lower Mainland for his family to live. In his testimony, he explained that when he was considering immigration through the PNP program, he had done some calculations and determined that if he sold all of his properties in Jinan, he could secure about \$900,000. He had also learned from Ms. Li that the cost of buying a townhouse in Langley was about \$250,000 to \$350,000. She suggested that he could purchase one in advance of his immigration as it would provide him with a place to live when he visited Canada. With that in mind, Mr. Li told his daughter that he would set aside about \$300,000 to purchase a home as well as a further \$300,000 for R.L.'s studies from grade 7 onward (that amount being chosen as it matched, in Mr. Li's mind, the approximate total amount he had spent on Ms. Li's education in China and at TWU).

[118] Ms. Li was also aware that once her father sold his assets in China, he would not have much left beyond the net proceeds of \$900,000. He told her that once he moves to Canada, and provides for R.L., purchases property, and pays his daughter \$150,000, he would have little money left; nevertheless, he told her, he would be able to live on his pension of about \$2,000 per month. Mr. Li also told his daughter that as a result, his original estate plan would not materialize:

So I said, "That's good, but I need to have a good discussion with you." I said, "You see, to support you going to university, I spent 300,000. When I come over here, I will have to buy a house and I will also have to keep a lump sum saving for your younger brother for the purpose of his tuition fees, for about 300,000". And I said, "After I come over here, I wouldn't be able to have opportunity to make a lot of money." Then I said, "If I have to dispose all my property, real estate properties in China, that would come up to 900,000, then I wouldn't have much left. And then if that's the case, my original state planning would not be able to materialize."

[119] Ms. Li agreed, and told her father not to worry about it. He also told his daughter that this plan would mean that she would only have to take care of R.L. for a much shorter period of time. He also suggested that Ms. Wei could help Ms. Li look after her children. Ms. Li agreed, telling her father: "Your so-called estate planning, isn't that something just involved my - - my property under my name? Don't worry about it. If you give it to me, I will take it. If you don't, that's okay." He asked her to confirm that both she and Mr. Kim agreed to the new plan, which they both did:

Then at the time, Xingzi said, "Your so - called estate planning, isn't that something just involves my - - my property under my name? Don't worry about it. If you give it to me, I will take it. If you don't, that's okay." Then I said, "Xingzi, if you say this, I feel very relieved. Let's do - do it like this. After your little brother's family reunification immigration is approved, I will sell off all of my assets in China and just transfer everything to Canada as soon as possible. I will give you 150,000. If I get time, I still have some money left after I come here, I would leave some money for your Auntie Wei to do a small business. Maybe that way, you will be able to make a little bit money. I have about 2,000 Canadian dollars, equivalent of a pension, a month. A month. So it wouldn't be an issue for me to carry out the daily living. And another good benefit is that your Auntie Wei can take care of your child."

I said, "You originally promised to agree to take care of [R.L.] for six years. If this plan works, then you only need to take care of [R.L.] for less than two years. So I asked to Xingzi, "What I said, do you think it's okay?" Xingzi says, "It's very good, let's just confirm this." And I said, "You and Kim are a couple." And I said, "Both of you have to agree, so please explain to Kim."

Then she started to talk to Kim for some time. They discussed in English, so whatever they said, I did not - - I could not understand. But eventually, in the end, Kim stretch out his thumb, showed me thumb up, and used Chinese to say, "Good."

- [120] In essence, Mr. Li and his daughter and son-in-law agreed to the plan calling for Mr. Li to immigrate to Canada with his family through the family reunification program. Ms. Li agreed to act as their sponsor and to facilitate the application process. In return, he agreed to pay her \$150,000 for her efforts. Mr. Li would liquidate all major assets in China, including 802, and move to Canada. He intended to use some of the funds that he intended to wire into his account to purchase a home for himself, his wife, and R.L. to live.
- [121] Thus, Ms. Li was fully aware of her father's new plan, including his changed intention concerning 802. She knew of his intention to sell the majority of the assets that he and Ms. Wei owned in China, including 802, and that he would use some of those sale proceeds to pay \$150,000 to Ms. Li and then deposit the rest in R.L.'s RBC Account and in Mr. Li's RBC Account.
- [122] It was also clear to Ms. Li that she would not be receiving 802 on her father's death, but instead would receive \$150,000 in the very near future, once assets in China were sold, to act as his family's sponsor and to help them facilitate their immigration.
- [123] When Mr. Li returned to China, he and Ms. Wei acted upon the agreement that Mr. Li made with his daughter. Mr. Li wired funds to Canada in accordance with that agreement. Some of those funds came from the sale of an asset owned by Ms. Wei. Mr. Li retained an immigration consultant in Beijing to obtain R.L.'s visa. Except for one "lower-value" apartment located in Dezhou, they began the process to sell all of their major assets, including 802. In due course, they sold four apartments, including a duplex, for a total of 6,890,000 RMB. At least two of the apartments were encumbered with mortgages. The net amount realized is not in evidence.
- [124] R.L.'s student visa was also approved in early November 2014. Mr. Li understood this to be an important prerequisite to his plan to immigrate to Canada. When he texted his daughter to inform her, "Got a call from Beijing, your brother's visa application is approved," she replied, "Fantastic", which is clearly inconsistent with her testimony that her father forced her to take R.L.
- [125] After R.L.'s visa was approved, Mr. Li engaged a real estate company to list 802 and another property for sale. Since title to 802 was in her name, and due to the significant problems she faced in providing a power of attorney to her father in Canada to facilitate the sale of 802 (consequent upon certain regulations imposed by the government of China), Ms. Li was required to travel to China, which she did in late November 2014, to sign a power of attorney that would be recognized in that country. She paid for her own airfare. She attended at a notary's office in Jinan to sign the document. In her submissions, Ms. Li argued that she would only have done so if it meant that she was to receive the whole of the proceeds of 802 as her gift. I disagree. She had a direct incentive to attend to do so because she would receive the payment of \$150,000 in the near future, following the completion of the sale of 802.

- [126] During her visit to China, Ms. Li confirmed to Ms. Wei that she could "rest assured" that she would look after R.L. when he moved to live with her to study in Canada.
- [127] The sales agreement for the sale of 802 was signed in March 2015. He sold it for 2.24 million RMB. He received some of the sale proceeds at that time, and the rest in early May when the purchaser's mortgage financing was in place.
- [128] Mr. Li also telephoned his sister in September 2014 to let her know of his immigration plan. They discussed where their mother would live once 802 was sold. When they subsequently spoke with their mother about it, she was quite happy to move to Qingdao (where Mr. Li's sister lived) and expressed her wish to live close to Mr. Li's sister and her support for Mr. Li's immigration plan.
- [129] In mid-March 2015, Mr. Li gave his mother 100,000 RMB from the proceeds of sale of 802 to cover her living expenses, including the cost of renting accommodation in Qingdao.
- [130] Ms. Li did not assert at that time or at any time later (including trial), that the money that Mr. Li gave to his mother from the sale of 802 belongs to her.
- [131] Between November 14, 2014 and May 5, 2015, Mr. Li wired a total of \$600,000 (of his anticipated \$900,000) to the three RBC accounts in Langley. Some of the early deposits came from funds that Mr. Li and Ms. Wei had previously deposited in the account for R.L. in China; the rest were made, in tranches, as they received funds from the ongoing sale of their assets.
- [132] Of the funds Mr. Li and Ms. Wei wired to Canada, \$420,000 came from the sale of 802. Mr. Li deposited a total of \$270,000 in R.L.'s RBC Account and \$150,000 in Mr. Li's RBC Account. He also wired, over time, \$180,000 in his daughter's RBC chequing account, of which \$20,000 was for R.L.'s tuition and living expenses for his first year of study, and \$10,000 for the Loan. The remainder - \$150,000 - was the payment to Ms. Li to act as sponsor and to facilitate their immigration.
- [133] Mr. Li sought to equalize contributions between his two children in order to avoid disputes in the future, which is the reason why he deposited \$270,000 into R.L.'s RBC Account. He believed it, together with the \$20,000 he deposited into Ms. Li's RBC chequing account, to be close to the amount of money he spent over time on his daughter for her education and the costs for her to live independently in China and Canada.
- [134] To avoid the restrictions imposed by the government of China limiting wire transfers out of the country to \$50,000 per year, Mr. Li was candid in his admission that he relied on some of his family and friends who used their quotas to wire some of his funds from their accounts to this country. He sought to take advantage of what he thought were favourable currency exchange rates. For example, he wired \$50,000 to R.L.'s Account in November 2014. When asked by his daughter why he was sending the money so far in advance of R.L.'s attendance in school in September 2015, Mr. Li told her that the money had to come sooner or later and that he wanted to take advantage of favourable exchange rates.

- [135] Without her father's knowledge, Ms. Li took a substantial portion of funds from Mr. Li's RBC Account and caused them to be transferred or deposited directly into her own accounts or to pay debt.
- [136] Also, and again without Mr. Li's permission, in January 2015, Ms. Li accessed approximately \$70,000 of the funds in R.L.'s RBC Account to purchase a new pickup truck for herself and Mr. Kim that cost \$63,000 and to pay down debt. At trial, Ms. Li explained that some of the debt was incurred to host her father during his stay in the summer of 2014 (including the cost of meals and travel to Banff, Alberta and the Sunshine Coast). Quite apart from the fact that she did not ask her father for permission to use these funds before withdrawing them, Ms. Li did not provide any receipts to support her claim for what she described as the high costs of entertaining and hosting Mr. Li. Through cross-examination, I became satisfied that her unsubstantiated evidence concerning the high costs of hotel and motel rooms was exaggerated, especially since she, Mr. Kim, and Mr. Li camped on a number of occasions during their Banff visit.
- [137] Ms. Li subsequently told her father what she had done with the money in R.L.'s RBC Account. She explained that she needed to move quickly to purchase the vehicle. Mr. Li was upset. He asked her what she expected him to say in the circumstances. Mr. Li asked his daughter to pay the money back, and she agreed. He understood from his daughter that she would do so from the \$150,000 payment he made to her to sponsor his family. Although it is not clear where she accessed all of the money to repay the borrowed funds to R.L.'s RBC Account, it is clear that she used at least some money from Mr. Li's RBC Account to do so without telling her father. Mr. Li was always under the impression that she repaid the borrowed funds from the \$150,000 he wired to her to act as his family's sponsor.
- [138] In addition to using Mr. Li's funds to repay the money she took from R.L.'s Account, Ms. Li used her father's money, including the \$150,000 payment to act as sponsor, to benefit herself and Mr. Kim. She used some of Mr. Li's funds to pay the entirety of the \$140,000 down payment on the Townhouse. She also put some in a Tax Free Savings Account, paid debt (over \$80,000 to renovate the home she owns with Mr. Kim, and to install a new roof and furnace), and invested some in a mutual fund account in her name. Mr. Li was unaware of any of these transactions.
- [139] Mr. Li chose not to access R.L.'s RBC Account and Mr. Li's RBC Account online through the internet from China due to his unfamiliarity with on-line banking and also because he could not understand English. He was concerned that he might lock out the accounts if he tried to access them through the internet from China, requiring him to fly to Canada and attend in person at the bank. He relied on his daughter to confirm that the funds were received and deposited into the appropriate accounts. He believed that she was able to monitor the accounts in Canada, supervise R.L.'s RBC Account, and advise RBC of his wishes that some of the funds in R.L.'s RBC Account be invested in mutual funds to earn a better return. As I noted, he did not understand that Ms. Li was a joint owner of the accounts.

- [140] R.L. moved in with his sister and Mr. Kim on August 14, 2015. Mr. Li accompanied his son to Canada. Ms. Li also arranged for her mother, Ms. Jiao, to travel to Vancouver and by coincidence (which was not explained in the evidence), she was on the same flight as R.L. Mr. Li returned to China later in September. Mr. Li also visited Vancouver during the summer of 2015 and suffered from shingles during his visit.
- [141] Ms. Jiao remained in Canada and did not return to China until November 2015. After she left, Ms. Li expressed her unhappiness with looking after R.L. She told her father that R.L. was stealing snacks. There was no mention of any other concern or that Ms. Li wanted R.L. to leave her home. Having no prior experience raising a child, and now on her own without her mother at her home, Ms. Li quickly became dissatisfied with looking after R.L.
- [142] Part of the problem was that neither Ms. Li nor Mr. Kim understood that they needed to plan for R.L.'s daily return from school in the afternoon, before they got home from work in the evening. R.L. was hungry when he came home from school. Ms. Li purchased those snacks for R.L. to eat in the interim, but became unhappy when he ate too many of them. It was, I find, an overstatement when Ms. Li told her father that R.L. was stealing snacks.
- [143] Later that month, Ms. Li asked her aunt, Mr. Li's sister, if she could persuade Mr. Li either to come and pick up R.L. or let him move into home-stay accommodation (which would mean R.L. would move in with strangers). Her aunt was upset, and asked her niece, rhetorically, as R.L. had been there only for a short time, "You've changed your mind?" Ms. Li told her aunt that R.L.'s expenses were too high, complaining, by way of example, that his hair cut cost \$15. Ms. Li's aunt expressed her reluctance to agree to her niece's request to speak to her brother because she knew that Mr. Li would be very angry. She ultimately agreed to speak to Mr. Li. Even so, she delayed in calling her brother. As I will go on to explain, before she could, Mr. Li found out about his daughter's wish to move R.L. into a home-stay directly from his daughter during a conversation via FaceTime on December 2. When Mr. Li learned that his daughter had spoken with his sister in November, he became upset that his sister had not telephoned him right away.
- [144] Up until this time, Mr. Li was unaware of his daughter's wish to have R.L. leave her care. He assumed that his daughter was moving forward to submit his family's reunification immigration application on December 2, 2015. He followed up with his daughter in November to remind her of the deadline. In his text dated November 27, he wrote:

Application for family reunification immigration is soon due, tell me in advance what documents are required, don't delay.

- [145] Ms. Li did not respond, which was out of keeping with her usual practice of responding to her father within a very short period of time, if not immediately. Mr. Li became concerned and followed up with a text message he sent on December 2, which was received by Ms. Li in Canada on December 1 at 17:09:

Tomorrow the application is due, have you prepared documents for family reunification immigration application?

- [146] His daughter's response, on December 2, surprised and shocked Mr. Li. They spoke via FaceTime. Mr. Li called her because she had not responded to his text messages. Ms. Li told him that she would not sponsor his family. She told him, "I'm not going to allow your whole family to -- to burden me." When he asked for an explanation, she replied, "You can pick up [R.L.] as well." She did not wish R.L. to live with her any further. When Mr. Li asked her why she had changed her mind so suddenly, she replied, "I don't want to have anything to do with your whole family." He accused her of "going back" on her previous promise and setting him up for "disaster". She hung up the phone.
- [147] When Ms. Li spoke of a burden, she told her father that she and Mr. Kim did not wish to take the economic risk or "burden" of sponsoring his family. She said she would only consider sponsoring him. If Ms. Li was gifted 802 as she claims, her stated concern about a potential economic burden is highly dubious as she would have already been in possession of what she says was a \$420,000 gift from her father.
- [148] Given that Ms. Li claims in her evidence to have done no research about the family reunification program as of that date, I also find her assertion of a burden improbable as she would have known little to nothing about the requirements of (including financial burdens) imposed on a sponsor.
- [149] Ms. Li's explanation at trial that she did not respond to her father's two text messages because she thought that he was suffering from a "mental illness" is not credible. Apart from the lack of any reasonable basis being provided for that belief, the sudden and highly abusive nature of her response to her father belies any suggestion that she was being careful in responding to his texts for that reason. I am satisfied that Ms. Li's explanation for her lack of response is a further example of concocted evidence.
- [150] Mr. Li wrote an email to his daughter, which led to a series of communications between them. The emails capture Mr. Li's attempts to demonstrate his ongoing love for his daughter and to respond to her accusations that he provided preferential treatment to R.L. Ms. Li's emails, on the other hand, reflect deep seated anger and bitterness as well as her perception of mistreatment in comparison to R.L.
- [151] The emails are lengthy and reflect certain issues brought up in their FaceTime conversation. The emails also contain remarks that appear to have been made in the heat of the moment, but overall, they reflect Mr. Li's attempt to convince his daughter of his love, to persuade her to embrace his wife and son, and to assure her that neither he nor his family would ever pose an economic burden to her. I will highlight a few of the key passages that bear on my decision.
- [152] In Mr. Li's initial emails, he tried to explain his prior economic travails, his reasons for immigrating to Canada, and his love for his daughter:

I thought I could prove you with facts that I love and care about you and your brother like the best parents in the world do to their kids, and I am even more open-minded and more visionary. I thought there shouldn't be any distrust at all between father and his be-loved kids. Apparently I was too simple at this issue. Even though it might be unnecessary, I still decided to send you this message.

First of all, I could proudly say with very clear conscience that I always love and care about you. I wanted to give you the best things in the world since the date of your birth. I made plan for your life such as deciding to send you to study abroad as soon as you were in junior school (of course if was also because I hated the dictatorship regime).

Since your brother was born, Daddy wanted to show you that my love to you had never changed. The apartment Daddy bought under your name was the only property paid out in full amount, while other houses were purchased with 80% mortgage. Under such poor family financial situation, Daddy wore clothes bought from the cheap public market, and your brother wore clothes with patches too (you had seen those pictures). Your grandpa cared about his son, asking me to eat some good meals in his place every week (at the time your grandpa and grandma received a pension around 2,300 in total only each month). During your study period, Daddy had never let you experience any financial difficulties (this might be my fault actually). On the contrary, I bought you the best notebook and vehicle. At the year of your graduation, being unable to borrow more money from any other sources, Daddy had no choice but asked you to sell the vehicle.

Your brother turned 13 this month. He lifted up his English to the current level within two years, and reached level 10 for unprofessional saxophone playing within three years (without any shortcut). It demonstrates that he is a smart boy. He may have some weaknesses such as telling a lie, which is inevitable in kid's growing up. They cannot be perfect. Can you think about if he has any worries when communicating with you, or maybe you have too high expectations on him, or you have pre-judgment on him? Kids lie in two situations - for self protection (afraid of being punished), and for something they want but dare not request. Recall what you were like at the age of 13. So be patient, put yourself in his shoes, have more communication. Assume that you are acting Daddy's role to teach him, with the purpose to help him grow up into a healthy adult (he will grow up soon in a couple of years). You're not supposed to treat him as a burden.

[153] Mr. Li told his daughter that since he was getting old, he wanted to live near his two children. He promised never to impose an economic burden on his daughter, stating that he would move back to China "without hesitation" before imposing on her. He told her that for the sake of R.L.'s honour, Ms. Wei would never call on Ms. Li for support in the event of his death.

[154] His comments fell on deaf ears. In her responses, Ms. Li accused her father of having no honour and providing preferential treatment to Mr. Li's new family. She accused Mr. Li of preferring R.L. when he bought him a better computer and a saxophone:

Please don't use honor as a warranty. Your whole family has no honor starting from the point you had an affair and had another family within your marriage.

To us, [R.L.] has nothing good except for knowing how to blow saxophone. English is his weakness.

Do you call it a burden only when I have to make money to support [R.L.] by carrying goods as a porter?

To be honest, you just bought me a notebook at the time when I was 21-year old yet an only daughter, and when you were a rich man. And this makes you remember for life. You bought saxophone and Apple computer for 12-year old [R.L.] at the time when you had no money, and you told me how much you love and care about me.

What had happened did not prevent you from building another family of your own. Do you need to spend money on decorating the new home? Do you need to spend money buying new car for your new family? Was either of the expenses less than my tuition? Merely it was about which is more important in your mind.

...

My life could have been so smooth with natural love between parents and child. Everything suddenly changed from the time you had unfaithful affair and started the other family in your marriage. I was an adult. I could accept it but I did not agree to it. You said your marriage issue has nothing to do with me. Then why did you think your out-of-wedlock child has to have something to do with me? You preached in the name of love and family, merely for the benefits of your other family.

[155] Ms. Li would not accept her father's explanation that the saxophone was used and inexpensive nor that the money for the computer came from R.L.'s aunt.

[156] She also chastised her father for raising the topic of Mr. Kim's family, telling him, "Don't point the figure [sic] at Kim's family again. At least Kim's dad did not throw a ridiculous brother to Kim to bring up."

[157] Ms. Li also accused R.L. of lying:

[R.L.'s] lying was found by us. We noticed that he lied as soon as he arrived here, meaning he did not start lying after living in my place. He lied not because he did something wrong. He lied casually as he talked. This indicates that he gained the hobby in China. Please don't try to slander my family education. I really don't have any expectation on him.

[158] When pressed on cross-examination, it became clear that her accusations about R.L. lying were greatly exaggerated. Her complaint was revealed to be that R.L. was eating too many snacks.

[159] Ms. Li made it clear to her father that when R.L. turned 13, which was close at hand, she would withdraw her custodianship of him, stating:

After he turns 13, I will withdraw my custodianship for him. The school will find him a home-stay. [R.L.] has no connection with us. Living with us will make us hate each other.

[160] At trial, Ms. Li insisted that she never agreed to sponsor her father and his family. The challenge to Mr. Li's evidence to the contrary as a concoction in order to found his claim in this action is without merit. I found Ms. Li's evidence to be inconsistent with the objective evidence, and in particular, with what she wrote to her father on December 3, 2015. At that point, and inconsistent with what she had just told him, she suggested that she might still act as a sponsor, but with added terms for which she would consult a lawyer. In her response to her father, she wrote:

Regarding sponsorship, I will find a lawyer to add additional terms. I will never sign any paper that may affect my family and the future of my children. Refer to point 1 for reason.

[161] "Point 1" contains Ms. Li's remarks accusing her father's family of having no honour.

[162] Much but not all of the tone and approach that Mr. Li took in that and some of his other emails was tempered as a result of Ms. Wei's suggestion. She encouraged her husband to use softer language (than he planned on using) to try to reason with his daughter in the hope that she would change her mind and abide by their agreement. She encouraged him to try to persuade his daughter of his love for her. Ms. Wei was also very concerned for her son's well-being given the vitriolic remarks made by Ms. Li. For example, she asked Mr. Li to change the word "stole" in reference to the money to "taken" or "took" away.

[163] At one point however, Mr. Li accused his daughter of being concerned only with money. He also accused his daughter in an email sent on December 3 of taking the family's property:

Look at your logics - while blaming 'your family is so-and-so', you are joyfully taking away this family's property; moreover you are expecting to get money from your husband's family. Money is all that you care about.

[164] Ms. Li accused her father of giving 802 to his new family:

'Taking away this family's property' - It is your own intention, isn't it? The property you kept on saying under my name became the property of your family. How embarrassed had you made my mom feel?

[165] But Ms. Li did not claim or assert in that email or any time during her email and text communications with her father, despite having numerous opportunities to do so, that 802 or its proceeds were a gift to her.

- [166] Ms. Li also told her father that she would not "even bother to tell" him what she had spent on R.L., and that she would withdraw her custodianship after he turned 13. Mr. Li responded angrily, telling her that she had made it clear that she hates him because he "did not maintain you [Ms. Li] as an only daughter, the only heiress of Daddy's property."
- [167] Ms. Li continued to send angry messages to her father that focused primarily on him, R.L., and her relationship with Mr. Kim and his family's monetary contributions.
- [168] Mr. Li could not understand the reason for his daughter's behaviour. From his daughter's comments, he thought it might have something to do with money. With help from a neighbor who can read English, Mr. Li was able to access R.L.'s RBC Account and Mr. Li's RBC Account on the internet. He saw that substantial sums of money had been removed. He was shocked.
- [169] Ms. Li called her father on December 3 (in Canada; the 4th in China) because Mr. Kim wished to speak with him. Mr. Kim was angry with Mr. Li for upsetting Ms. Li. He insisted that Mr. Li speak with him, as translated by Ms. Li. Mr. Kim told Mr. Li that his wife did not want to submit the immigration application, but not to "blame" her "because it's my idea." He told Mr. Li that they will return the money "even if it means they have to sell the house."
- [170] Mr. Li then sent an email to his daughter the next day confirming Mr. Kim's promise. He asked her for a repayment plan.
- [171] In her written response, Ms. Li did not deny her father's account of his discussion with Mr. Kim. Instead, she told him that, she would consult a lawyer.
- [172] Ms. Li's aunt contacted her niece to ask her why she had changed her mind. She was critical of Ms. Li. She asked her how she "could do such a thing." When Ms. Li explained that her father and his family would be a burden on her if she sponsored them, her aunt reminded her of her prior boast that she was earning a good salary and was not concerned. She told Ms. Li that she felt as if she "had set up a trap for your father." She could hear Mr. Kim's raised voice in the background. Her aunt testified that he was screaming. At that point, her aunt became more upset, and criticized Mr. Kim to Ms. Li, accusing him of not doing enough as a husband. She urged her niece to consider her words carefully and then hung up.
- [173] Ms. Li and her aunt subsequently had an on-line chat through a chat room known as "wechat". Ms. Li told her aunt that she and Mr. Kim had advised Mr. Li that they would rather sell their property in Langley than help him immigrate to Canada. Ms. Li's aunt asked her why a lawyer was needed, stating:

Didn't you say that you'd return the money to your dad today? Why does a lawyer need to be involved? You two father and daughter, really want to go to the court?

- [174] Ms. Li did not deny, to her father or her aunt, that the promise to repay the funds had been made to Mr. Li. Instead, she responded, "Everything will be handled by a lawyer."

[175] In closing submissions, in an attempt to demonstrate that Mr. Li had gifted 802 to her, Ms. Li parsed out certain comments in one of Mr. Li's emails concerning the manner in which he was able to obtain the \$420,000 he wired to Canada. I found those submissions ignored the specific words that he used (he was referring to increases in value for all of his properties). They also ignored the specific contents and overall context of the whole of Mr. Li's comments in that email as well as the entirety of the communications that passed between them. In hearing his explanation and considering the entirety of their communications, I am satisfied that Mr. Li's remarks in that email were part of his ongoing attempt to have his daughter see matters from his perspective and to appreciate the means by which he was able to acquire his assets over time in very strained financial circumstances.

[176] I also reject the defendants' submission that a statement made by Ms. Li to her father in a text message she sent on May 5, 2015 demonstrates that Mr. Li was aware that the monies he wired to Canada were proceeds of the sale of his gift to her of 802. The texts read as follows:

[Mr. Li] The entire 70 thousand has been sent to your younger brother's account. Please check.

[Ms. Li] All 270 thousand went in.

[Mr. Li] Are you sure?

[Ms. Li] I've transferred all of that to my account.

[Mr. Li] Please confirm again, so I can let others close the accounts.

[Ms. Li] Confirmed.

[Mr. Li] Ok, so fast.

[177] In submissions, the defendants focused on the words, "I've transferred all of that to my account" to support their submission that Mr. Li knew the money went into his daughter's account and did not object at that time because it was hers.

[178] This submission overlooks the context in which Ms. Li's comment was made and his singular focus to ensure that the money that he, his family, and friends had wired to Canada, from their various accounts in China to the accounts at the RBC, had been received. Mr. Li's anxiety is clear from the text messages he sent to his daughter and her responses.

[179] In hearing the evidence of Mr. Li, I am satisfied that in his anxiety, he overlooked what I find to be a vague remark that was not directed or responsive to any question that he was asking her at the time. In hearing Ms. Li, I am satisfied that she could provide no credible explanation for inserting that vague remark in that sequence of communications.

- [180] In submissions, Mr. Li's counsel suggested that this remark was "sneaked in". I do not need to determine Ms. Li's motive. What I can and do find is that Mr. Li completely overlooked the remark. He was highly concerned that if the wire transfers were rejected, then the funds would be returned to the accounts of his family and friends, which in turn would pose a problem for him in China given the restrictions on the amount of funds that any individual could wire per annum from China.
- [181] Further, this was the only time that Ms. Li came close to advising her father that she had taken his funds for herself.
- [182] Mr. Li and Ms. Wei were alarmed at what they perceived to be Ms. Li's unreasonable, and overtly hostile attitude towards R.L. Mr. Li tried to keep Ms. Li calm by letting her know that she could look for a home stay for R.L., but he asked her to be patient and not to rush. Meanwhile, both he and Ms. Wei decided that she should fly to Vancouver to remove R.L. from Ms. Li's home and find a suitable place for him to live. With the assistance of an agent, they arranged for a new, but temporary guardian to replace Ms. Li, until Ms. Wei could find accommodation in the Lower Mainland while R.L. completed school. They decided not to tell Ms. Li or Mr. Kim of their plan. They wanted to remove R.L. from their house with as little upset to R.L. as possible.
- [183] I agree that Ms. Wei and Mr. Li were naturally, and reasonably, upset at the sudden and dramatic turn of events. They acted responsibly as parents in removing him from Ms. Li's home as quickly as possible in the circumstances.
- [184] On December 11, Ms. Wei flew to Vancouver and met the new guardian. Together, they went to Ms. Li's house. Neither Ms. Li nor Mr. Kim was home. She was surprised to find R.L. there because he was supposed to be at school (he was at home sick). She took R.L. with her to the RBC. She also asked the guardian, who spoke English, to call Ms. Li and advise her that she had come to take R.L. Both Ms. Li and Mr. Kim were suspicious because they did not know who the guardian was and were unaware of Ms. Wei's plans, but agreed to meet him at the RBC.
- [185] Ms. Li and Mr. Kim remained hostile even though they recognized that it was R.L.'s mother waiting outside the RBC. They were angry that she came to Canada unannounced. When Mr. Kim and Ms. Li found out that Ms. Wei had come to the house earlier to collect R.L., they accused her of breaking the law by entering their home without permission. They would not accept her explanation that she thought they would be present, and not R.L., to let them in. Nor would they accept her assurance that she did not go inside their home.

- [186] When they got to their home, Mr. Kim insisted that Ms. Wei and the guardian stay off of his property. He instructed the guardian to park his vehicle on the street. He would not let them park in the driveway. Mr. Kim insisted that the guardian and Ms. Wei not come onto the property. Mr. Kim and Ms. Li would not allow them to help R.L. collect and pack his belongings. Mr. Kim also became angry with R.L. when he learned that R.L. was aware that his mother was coming to get him but did not tell him or Ms. Li.
- [187] Matters worsened. R.L. packed his belongings and was shown to the front door. Neither Mr. Kim nor Ms. Li came outside of the house. They did not help him with his luggage. They remained inside while R.L. made multiple trips to carry his belongings to the street where his mother's vehicle was parked. Meanwhile, Ms. Wei was forced to wait on the street because Mr. Kim threatened to call the police if she or the guardian came onto his property.
- [188] Mr. Li sent an email the next day chastising his daughter and Mr. Kim for their treatment of his wife and son. He asked her to return the remainder of R.L.'s living expenses for the school year. In her response, Ms. Li did not deny her father's statements, and instead accused Ms. Wei of acting illegally:

It was illegal to enter into my home without our permission, which I have surveillance recording as proof. Lessons will be given if not obeying rules. We were going to return [R.L.'s] living expenses but it is up to us when to return.

- [189] She never returned those funds. At trial, Ms. Li claimed that she had spent all of the money designated for the 2015/16 school year on R.L. She has not provided any receipts or other proof.
- [190] During closing argument, counsel for Mr. Li suggested that Mr. Kim and Ms. Li were upset at Ms. Wei's sudden arrival in Canada and attendance at the RBC and their home because they were fearful that she would discover what they had done with the money. That is possible, but since it was not put to either of them, I will not make that finding in the circumstances.
- [191] I will say, however, because it bears on their credibility, that at trial, Ms. Li and Mr. Kim professed upset at Ms. Wei showing up unannounced to take R.L. in what I perceived to be an attempt to demonstrate their concern and caring for him. I found their attempts to be without sincerity and credibility, and completely at odds with the forceful sentiments expressed by Ms. Li to her father in her prior communications. She demanded that R.L. be removed from their home without delay and made it clear that she was going to withdraw her custodianship of R.L. on December 12, when he turned 13, leaving him without a legal guardian in Canada. Once Ms. Li and Mr. Kim recognized that it was Ms. Wei at the bank and accepted that she had come to pick up R.L., there was no reason to be hostile or rude. They should have been relieved that they would no longer have to look after R.L. Their conduct at that time was consistent with the invective Ms. Li had shown her father earlier that month. It defies probability to suggest that the behaviour of Ms. Li and Mr. Kim was consistent with Ms. Li having received a gift of \$420,000 (some of which they had already

used to their benefit to pay for renovations to their home and to pay debts).

[192] Ms. Wei has since purchased property in the Lower Mainland where she resides with R.L. while he attends school.

[193] Lastly, when Ms. Li advised her father that she had repaid the Loan, she misled him. She did not tell him that she used his money to do so.

Summary of Key Findings

[194] When Mr. Li purchased 802, he did not intend it to be an inter vivos gift to his daughter. He purchased 802 for several reasons: (a) to provide a home for his aging parents to live; (b) to provide an inheritance for his daughter on his death; (c) to avoid disputes between his two children on his death; and (d) to protect his cash.

[195] Mr. Li did not create a testamentary disposition in favour of his daughter.

[196] When Mr. Li purchased 802, he intended to have complete control over the disposition of 802 during his lifetime, including the right to use and sell it, and in that event, to disburse the sale proceeds, all as he saw fit. His intention in that respect never changed.

[197] Ms. Li was aware since May 2003 of Mr. Li's reasons for purchasing 802 and of his right to deal with and dispose of it during his lifetime. She understood that she had no right to take, control, or sell 802, and also, that she might not inherit 802 on her father's death.

[198] Mr. Li registered title to 802 in Ms. Li's name, but she held it in trust for him until it was sold. At no time did he gift his beneficial ownership to her. Nor did he ever gift the proceeds of the sale of 802 to Ms. Li. The sale proceeds belonged to Mr. Li.

[199] Mr. Li's plans in respect of 802 changed in the late summer of 2014, when he decided to immigrate to Canada with Ms. Wei and R.L. Ms. Li was fully aware that her father's plans for 802 changed.

[200] Mr. Li reached an agreement with Ms. Li to pay her \$150,000 to act as his family's sponsor and to facilitate their immigration application. She knew that she would not receive the proceeds of sale of 802.

[201] Ms. Li invited R.L. to live with her and Mr. Kim after R.L. graduated from elementary school. In accordance with that invitation, R.L. moved to live with his stepsister in August 2015.

[202] Ms. Li and Mr. Li agreed that he would give her \$20,000 per year to cover R.L.'s tuition and living expenses, which he proposed, and they agreed, would be set at \$650 per month. Of that amount, Ms. Li could keep whatever sum she did not spend in a particular month.

- [203] Ms. Li removed money that Mr. Li deposited in R.L.'s RBC Account and Mr. Li's RBC Account, without her father's consent. She used those funds for the benefit of herself and Mr. Kim. Except for her withdrawal of funds from R.L.'s RBC Account to purchase the vehicle and to pay her debt, which she told her father she had done after the fact, Mr. Li was unaware of his daughter's conduct in respect of his other funds. She repaid the funds she took from R.L.'s RBC Account with her father's funds.
- [204] Contrary to her agreement with Mr. Li, Ms. Li refused to act as the family's sponsor. She did not take any steps to carry out her agreed role. She nonetheless took the \$150,000 payment for her own purposes.
- [205] On December 2, 2015, Ms. Li made a sudden and abrupt demand that R.L. be removed from her home. She told her father that she would renounce her custodianship of R.L. when he turned 13 on December 12.
- [206] Ms. Li has not repaid any of her father's funds.
- [207] Ms. Li has wrongfully taken \$420,000 that belongs to Mr. Li.
- [208] She has also refused to return the remainder of the funds she was given for R.L.'s living expenses for the months of January to June 2016.
- [209] Ms. Li used her father's money to renovate her house, to pay personal debt, to invest in a TFSA, and to make the down payment on the Townhouse. It is unclear whether she used all or any portion of those specific funds that Mr. Li wired into Ms. Li's chequing account to purchase the Townhouse, or whether she used funds from Mr. Li's RBC Account, or a combination of both.
- [210] Mr. Kim has also benefitted from his wife's wrongful conduct.
- [211] Ms. Li has not repaid the Loan.

Determination

Loan

- [212] Ms. Li does not dispute that the Loan was made. I reject her defence that she has repaid it. The money from which Ms. Li claims it was repaid came from funds to which Ms. Li had no right to use. Ms. Li is liable for the Loan amount of \$10,000. Since there was no agreement to pay interest, none is awarded. Post-judgment interest shall accrue on the amount until it is paid.

Conversion

[213] Mr. Li's first complaint against Ms. Li and Mr. Kim is grounded in the tort of conversion. Conversion is established when there is a positive wrongful act of dealing with goods, including funds, in a manner and with an intention inconsistent with the owner's rights: *Royal Canadian Legion, Branch No. 15 v. Burkitt*, 2005 BCSC 1752 at para. 104; *Ast v. Mikolas*, 2010 BCSC 127 at para. 128; *Drucker, Inc. v. Gui*, 2009 BCSC 542 at para. 58; *Dhothar v. Atwal*, 2009 BCSC 1203 at para. 15.

[214] The requisite elements of the tort to be proven are:

- (a) a wrongful act by the defendant involving his goods;
- (b) the act must consist of the handling, disposing, or destroying the goods; and
- (c) the defendant's actions must have either the effect or intention of interfering with (or denying) the plaintiff's right or title to the goods.

[215] Mr. Li submits that he has established that Ms. Li wrongfully handled his funds in a manner and with an intention inconsistent with his rights and with his stated intention for the funds he placed in Canada. I agree. Ms. Li wrongfully converted funds from R.L.'s RBC Account and Mr. Li's RBC Account, for her own benefit and the benefit of Mr. Kim. She also converted the \$150,000 that Mr. Li placed into her RBC chequing account. She took those funds without performing any of her agreed upon tasks.

[216] As well, Ms. Li has failed to return the money designated for R.L.'s living expenses for the remainder of the 2015/2016 school term. These funds were part of the \$20,000 deposit that Mr. Li wired directly into his daughter's RBC chequing account. Even assuming she had spent all of the money allocated for December 2015, in the absence of any receipts or other credible evidence, Ms. Li is obliged to return \$3,900, which represents \$650 per month for six months, i.e., January to June 2016.

[217] Ms. Li is therefore liable to her father for converting his funds in the amount of \$423,900.

[218] Conversion is a strict liability tort, where even an innocent third party recipient of stolen goods may be liable: *Ast* at para. 127. Whether Mr. Kim knowingly participated in his wife's conversion of the funds at the time she removed them from R.L.'s RBC Account and Mr. Li's RBC Account is immaterial. He subsequently became aware of the conversion and in any event, has enjoyed the benefit of the converted funds. He is also liable to Mr. Li in respect of his receipt and benefit of converted funds.

Unjust Enrichment

[219] Mr. Li also advances an alternative claim of unjust enrichment.

[220] If I had not found that Mr. Li had proven his claim for conversion, then I would have found that he has proven this alternative claim.

[221] To succeed with a claim for unjust enrichment, Mr. Li must, per *Harraway v. Harraway*, 2009 BCCA 561, at para. 14, establish the following elements:

- (a) Ms. Li and Mr. Kim have been enriched;
- (b) Mr. Li has suffered a corresponding deprivation; and
- (c) there is no juristic reason for the enrichment.

[222] The third element is examined in two stages. First, a claimant such as Mr. Li carries the onus to prove the absence of a juristic reason to deny recovery: *Garland v. Consumers' Gas Co.*, 2004 SCC 25 at para. 44. A short list of established categories of juristic reasons is set out in *Garland* at paras. 44-45: (a) a contractual right; (b) a disposition of law; (c) a donative intent; and (d) other valid common law, equitable, or statutory obligations.

[223] If the burden is met, then the onus shifts to Ms. Li and Mr. Kim to rebut the *prima facie* presumption of unjust enrichment. This may be done by showing another reason why the enrichment may be retained, and can involve the reasonable expectations of the parties and public policy considerations: *Garland* at paras. 45-46.

[224] In this case, Mr. Li has established all three elements are present in respect of the funds that he placed in each of the RBC Accounts. The funds that he placed in R.L.'s RBC Account and Mr. Li's RBC Account as well as the money he wired to his daughter's RBC account were for specific purposes. Putting the \$150,000 payment aside, neither Ms. Li nor Mr. Kim had any right to use the funds for any other purpose without Mr. Li's express consent. There was no juristic reason for Ms. Li and Mr. Kim to use any of those funds for any other purpose. Other than the money required to pay R.L.'s tuition fees and living costs (for September to December, 2016), Ms. Li and Mr. Kim have not demonstrated any reason why they may retain any benefit from those funds. As for the \$150,000, Ms. Li repudiated her agreement with her father, and has thus been unjustly enriched by her retention of those funds as well.

Constructive Trust Remedy and Tracing

[225] Mr. Li seeks a declaration that he is entitled to a constructive trust in respect of the Townhouse. His claim is grounded in both conversion and unjust enrichment. The approach to the remedy is the same. He does not seek such relief in respect of the defendants' family home in Langley.

[226] A constructive trust is one of several remedies potentially available to Mr. Li. What is the remedy in cases where, as here, it is money as opposed to a tangible asset that has been converted? Where the funds remain with the tortfeasor, judgment is for the dollar amount converted unless a proprietary claim can be made out. The monetary claim is often referred to as one in *detinue*. In the case at bar, the parties did not distinguish between conversion and *detinue*, and instead referred to Mr. Li's claim as one of conversion. The potential proprietary remedy is usually, but not always, looked at from the perspective of

the nature of the loss to, and the reasons for recognizing a right of property in, the claimant.

[227] To establish a proprietary remedy, Mr. Li must prove a direct link between his misappropriated funds and the Townhouse. He must also prove that a monetary award is inadequate, inappropriate, or insufficient: *Harraway* at paras. 51-52; *Kerr v. Baranow*, 2011 SCC 10 at para. 50; *Peter v. Beblow*, [1993] 1 S.C.R. 980; *Tracey v. Instaloans Financial Solution Centres (BC) Ltd.*, 2008 BCSC 669; *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57 at para. 92; *Lac Minerals Ltd. v. International Corona Resources Ltd.*, [1989] 2 S.C.R. 574.

[228] In *Kerr*, the Court described the constructive trust remedy as follows:

[50] The Court has recognized that, in some cases, when a monetary award is inappropriate or insufficient, a proprietary remedy may be required. *Pettkus* is responsible for an important remedial feature of Canadian law of unjust enrichment: the development of the remedial constructive trust. Imposed without reference to intention to create a trust, the constructive trust is a broad and flexible equitable tool used to determine beneficial entitlement to property (*Pettkus*, at pp. 843-44 and 847-88). Where the plaintiff can demonstrate a link or causal connection between his or her contributions and the acquisition, preservation, maintenance or improvement of the disputed property, a share of the property proportionate to the unjust enrichment can be impressed with a constructive trust in his or her favour (*Pettkus*, at pp. 852-53); *Sorochan*, at p. 50).

[Emphasis added]

[229] Where converted funds have been used to acquire an asset by the tortfeasor, as is the case in this action, another possible remedy may be a tracing order and an equitable lien: see, e.g., *B.C. Teachers' Credit Union v. Betterly*, [1975] B.C.J. No. 1158 (S.C.). In some circumstances, punitive damages are awarded: *Kolody v. Neil*, 1998 ABQB 1009 at para. 24. Punitive damages have not been pleaded in Mr. Li's notice of civil claim.

[230] In *B.C. Teachers' Credit Union*, Mr. Justice Bouck granted an equitable lien to the plaintiff whose funds in the amount of \$45,000 were stolen by a Mr. Smith who then used nearly all of those funds to purchase property in the name of a related person (the defendant) in the amount of \$45,154.24. The plaintiff sought a declaration that it owns the property and an order conveying title to it, or alternatively a lien to the extent of \$45,000. Bouck J. found that Mr. Smith had contributed \$1,000 and ordered an equitable lien in favour of the plaintiff in accordance with its interest, i.e., \$44,154.42/\$45,154.42 or 98% of its value.

[231] In reaching his decision, Bouck J. made these remarks, which I find of assistance to this case:

[26] The \$1,000 equity paid by Smith has caused me some concern since he had the land conveyed into the name of the defendant. Usually, when a person buys property with his own funds and then has the conveyance registered in the name of a stranger there is a

presumption of a resulting trust. The stranger is then presumed to hold the land in trust for the purchaser. The presumption is of course rebuttable. If that principle is applied to Smith and the defendant then I would have to hold there is a presumption of a resulting trust in favour of Smith.

- [27] But the concept of a resulting trust is an equitable rule. The question then arises whether equity should play any part in assisting Smith to recover his \$1,000. I think not. The greater part of the purchase price was made up of stolen money. Without it Smith could not have bought the house. The rules of equity should not be extended in any way to aid a thief in his unlawful intrigues.

[Emphasis added]

- [232] This approach has been considered with approval in this province and others: *Ruwenzori Enterprises Ltd. v. Walji*, 2006 BCCA 448 at para. 36; *Toronto-Dominion Bank v. Storr*, 2014 ONSC 4278 at paras. 129-131; *Kolody v. Neil*, 1998 ABQB 1009 at para. 24.

- [233] Consequential losses suffered by the wronged party may also be recovered, subject to the principles of remoteness: *Columere Park Developments Ltd. v. Enviro Custom Homes Inc.*, 2010 BCSC 1248 at para. 35. For example, where the value of a converted chattel has increased, the claimant is entitled to the increase as consequential damages (which some case authorities have referred to as special damages): *Cash v. Georgia Pacific Securities Corp.*, 1990 BCSC 1052; *Asamera Oil Corp. Ltd. v. Sea Oil & General Corp. et. al.*, [1979] 1 S.C.R. 633.

- [234] Mr. Li's claim that he suffered a consequential loss due to rising property values since 2015 might also be considered within the realm of consequential loss. According to *Columere Park*, at paras. 31-32, a broad interpretation consequential loss is warranted:

- [31] Conversion usually results in what can essentially be characterized as a "forced sale" of the chattel. The remedy of forced sale is an exceptional one, this confines the tort of conversion to major interferences which are serious enough to warrant the recovery of the full value of the goods. Typically, the value of the chattel is assessed at the time of conversion. This is different from the tort of "detinue": which is a continuing wrong for which the cause of action may be defeated by a return of the chattel any time before judgment. Damages for detinue are thus assessed at the time of trial. When conversion occurs, however, plaintiffs are expected to mitigate by replacing the chattel promptly.

- [32] This remedial distinction between detinue and conversion is the subject of some debate and has led to the recent support for "bridging the gap by awarding in conversion any increase in the value of goods as consequential damages" which, ideally, would "lessen the evil of having remedies dependant on procedural technicalities": *The Law of Torts* at 292; see also the words of Estey J. in obiter in *Asamera Oil Corp. Ltd. v. Sea Oil & General Corp.* [citation omitted]. With respect to acts of conversion, consequential loss typically refers to the change in value of the chattel(s) at issue, however, where funds are at issue, the valuation is

simple. A somewhat broader characterization of "consequential loss" is appropriate in this case, and such an interpretation accords generally with the remedial principle of compensatory damages in tort law.

[Emphasis added]

[235] Damages for conversion are also subject to a plaintiff's duty to mitigate: *Columere Park* at para. 35. Mitigation does not arise in this case. Mr. Li acted promptly to recover the funds converted by his daughter. His counsel also conducted a title search at the early stages of the litigation to determine if she had purchased any real property with the funds. The search results were negative.

[236] Keeping those possible remedies in mind, it was only through cross-examination of Ms. Li at trial, after Mr. Li had closed his case, that he learned of Ms. Li's purchase of the Townhouse. During closing argument, Mr. Li sought and obtained an order amending his notice of civil claim to allege a constructive remedy in respect of the Townhouse. Even without that amendment, the decision of the Court of Appeal in *BNSF Railway Co. v. Teck Metals Ltd.*, 2016 BCCA 350 makes it clear at para. 83 that the availability of constructive trust remedy need not be decided on the basis of the pleadings:

[83]

6. Contrary to the plaintiff's submission, all constructive trusts (whether remedial or institutional) require that the plaintiff show a monetary award would be inadequate or inappropriate, and identify property or proceeds thereof to which the plaintiff's labour or money contributed. The 'process' of tracing is available to enable a plaintiff to determine whether the second condition can be met.
7. There is clear authority for the proposition that the availability of a constructive trust need not be decided on the basis of pleadings. Being dependent on facts found at trial, the issue can be resolved once the plaintiff is able to make an "informed choice" prior to final judgment being pronounced: *Tracy*; *Waxman*; *Lac Minerals*.

[Emphasis added]

[237] Unaware of the purchase until Ms. Li's cross-examination, Mr. Li did not adduce any evidence in his case of any increased value to the Townhouse, of market values in general in the Lower Mainland or the effect of the conversion on his ability to purchase a residence for himself and his family. Ms. Li did not abide by her document disclosure obligations under the Rules of Court [Rules]. She did not disclose the purchase at any time during the litigation even though tracing is specifically claimed as one of the remedies in Mr. Li's notice of civil claim.

- [238] Mr. Li submits that in light of significant increased property values in the Lower Mainland since his daughter purchased it, Ms. Li would be unjustly enriched by her wrongful conduct if she is permitted to retain the Townhouse. In addition to claiming a proprietary interest in the Townhouse based on the direct link between his converted funds and its purchase, Mr. Li submits that he is faced with the increased cost of purchasing property for his family home and asserts this to be a consequential loss that he has suffered.
- [239] However, and as I advised counsel, I could not accede to Mr. Li's request to take judicial notice of any increase in the value of the Townhouse from documents from the BC Assessment Authority obtained over the internet, nor could I take judicial notice of increases of property values in the Lower Mainland (since Ms. Li acquired the Townhouse) as reported generally in the print and television media, or of the purported effect on Mr. Li of the 15% non-resident tax imposed by the Provincial government in August 2016.
- [240] At the same time, I must reject the defendants' submission that since Mr. Li did not seek to purchase property or do anything with the funds in Mr. Li's RBC Account during 2015, and given the absence of evidence to establish insufficiency, his claim to the Townhouse must necessarily fail. It was clear from his evidence that he intended to use his funds to purchase a home for his family to reside in the Lower Mainland. The lack of evidence to explain his reason for not purchasing property in 2015 or making use of the money in Mr. Li's RBC Account is not due to any fault on Mr. Li's part in these circumstances, where he only learned of the acquisition of the Townhouse during the defendants' case.
- [241] Mr. Li has established the direct link between his funds and Ms. Li's acquisition of the Townhouse sufficient to establish the first part of the test for the imposition of a constructive trust. The more difficult question is whether he has established that a monetary award is insufficient to compensate him in the circumstances such that he is entitled to a constructive trust remedy or other right of recovery per an equitable lien or consequential loss as a result of the conversion.
- [242] Mr. Li's ability to do so is impeded by the absence of evidence concerning his specific plans to purchase property for himself and his family in the Lower Mainland, the effect on his plans of rising real estate market values in the Lower Mainland since his funds were converted, the effect of the 15% transfer tax on him, and the current value of the Townhouse.
- [243] Does that mean that a remedy must fail? In my view it should not, because it would be unjust in the circumstances to do so. I say that for the following reasons.

- [244] Ms. Li intentionally and wrongfully used her fathers' funds, which, depending on which account the money came from, were designated to purchase property for his family in the Lower Mainland or to pay Ms. Li to act as their sponsor, to obtain investment property for herself. She failed to disclose the acquisition until pressed on cross-examination, and even then professed to be unable to recall the address of the Townhouse (forcing Mr. Li's counsel to conduct another search for it).
- [245] The admissions obtained from Ms. Li establish the direct link between his funds (designated to purchase property for Mr. Li and his family) and the Townhouse and raise the possibility that she has profited from its acquisition.
- [246] It would also be unconscionable in my opinion to permit Ms. Li to retain any benefit from her intentional wrongdoing in the circumstances of this case where Ms. Li's conduct rises to the level of deceit.
- [247] In some instances, the moral quality of the tortfeasor's conduct is considered as a factor in determining whether a constructive trust should be ordered. The case authorities are clear that there may be cases where the conscious wrongdoing may "so offend a court that it would deny to the defendant the right to keep the property": *Lac Minerals* at par. 197; *Foskett v. McKeown*, [2001] 1 A.C. 102; *Ruwenzori Enterprises Ltd. v. Walji*, 2006 BCCA 448 at para. 41. In *Lac Minerals*, the Court said, at para. 197:

The moral quality of the defendants' act may also be another consideration in determining whether a proprietary remedy is appropriate. Allowing the defendant to retain a specific asset when it was obtained through conscious wrongdoing may so offend a court that it would deny to the defendant the right to retain the property.

[Emphasis added]

- [248] While I am of the opinion that this is one of those cases, Mr. Li's claim for a remedy in respect of the Townhouse should be decided on evidence following a tracing inquiry conducted by the Registrar, which is a remedy that Mr. Li specifically pleaded in his notice of civil claim.
- [249] Tracing itself is not a claim or a remedy. As the House of Lords pointed out in *Foskett* at 127-129, tracing is the process by which a claimant demonstrates what has happened to his property. There is no difference whether the cause of action giving rise to a tracing remedy is at common law or in equity.
- [250] In *Ast*, Mr. Justice Cullen (as he then was) issued a tracing order and an order for an accounting in circumstances where it was unclear whether the defendants, who were liable for conversion, had profited from their wrongful conduct (even though the plaintiff was aware that some of the converted funds had been used to purchase property prior to the trial). Cullen J. also issued an interlocutory injunction, consequent upon the tracing remedy, enjoining the defendants from disposing of real property pending the outcome of the tracing and the accounting, and also ordered a certificate of pending litigation to be

registered against title to the property. He made those orders without specific evidence being adduced in the plaintiff's case to meet the tests necessary to establish a constructive trust. The purpose of the orders was to prevent the defendants from profiting from their wrongful conduct.

[251] His reasoning is explained in these paragraphs from his reasons for judgment:

[168] On the basis of the evidence before me, it is not possible to conclude whether the defendants have made a profit or been unjustly enriched over and above the quantifiable loss to the plaintiff.

[169] There is evidence that some of the plaintiff's funds were spent on home improvements and reduction of debt secured by mortgages against the plaintiff's real property, as well as property taxes. There is also evidence that they have acquired some assets by use of the wrongfully acquired funds. As well, there is evidence that some portion of the wrongfully acquired funds have not been accounted for.

[170] In those circumstances [it] seems to me appropriate to order a tracing order and make an order for an accounting by the defendants in addition to the award of monetary damages to permit the plaintiff to pursue and identify any unjust enrichment or profit enuring to the defendants over and above the plaintiff's quantifiable loss.

[172] I also consider it appropriate to grant an interlocutory injunction, pending the result of the tracing order and order for an accounting, which will restrain the defendants from dealing with any of their assets or real property, and from selling, conveying, assigning, or charging their assets or causing them to be sold, conveyed, assigned, or charging any interest or equity therein until the interest the plaintiff in any such assets or real property has been determined through the process of the tracing order and accounting or until further order of the court.

[173] I order the defendants are entitled to the use of non-proprietary assets frozen by the injunction to pay their reasonable living expenses, debts and legal costs.

[Emphasis added]

[252] Given the manner in which Mr. Li found out about Ms. Li's acquisition of the Townhouse, I would take a similar approach in this case.

[253] Mr. Li should be allowed the opportunity to establish the insufficiency of a monetary award and the merits of a proprietary constructive trust or other remedy, following the outcome of a tracing inquiry (and other inquiries discussed below) conducted by the Registrar. As was the case in *Ast*, in *Ruwenzori Enterprises* (which is applied in *Ast* at para. 171), Mr. Justice Pitfield took the same approach, pointing out, at para. 241, "that the results of the tracing permit a claimant to determine whether it will opt for a proprietary remedy in respect of funds derived from it, or a monetary judgment in respect thereof." In one sense, Mr. Li's discovery at trial of Ms. Li's acquisition of the Townhouse was a form of tracing of

her use of his funds. Mr. Li should not be foreclosed from his election in pursuing a proprietary or other remedy in the circumstances.

[254] Following Ast, I order, per Rule 18-1(1) and (3) of the Rules, a tracing and an accounting of the converted funds, to be conducted by the Registrar and for the Registrar to issue a report. I likewise order the Registrar to conduct an accounting in respect of the monetary benefit enjoyed by Mr. Kim consequent upon his liability for conversion.

[255] Ms. Li provided some evidence that she rents the property out and that rental income is used to make the monthly mortgage payments. There is no evidence from which I can determine whether Ms. Li receives any net profit from the rent once the mortgage and other expenses are paid. Nor is there any evidence concerning the value of any contribution she may have made to the Townhouse that supports any interest she may have in the property.

[256] For that reason, I have determined that the relative interests of both Mr. Li and Ms. Li in the Townhouse should also be referred to the Registrar to conduct an inquiry per Rule 18-1(1) and to provide a report with findings and recommendation(s) per Rule 18-1(3).

[257] Until those enquiries are completed and Mr. Li has made his election in all respects, it is premature to order a final monetary judgment in respect of the conversion.

[258] Mr. Li has already filed a certificate of pending litigation against title to the Townhouse. In the absence of an application by Mr. Li for an order enjoining Ms. Li from selling or otherwise disposing of her interest in the Townhouse, or from further encumbering title, I would not issue such an order at this time even though Cullen J. in Ast saw it as necessarily consequent on the tracing remedy. If an injunction is sought, it should be on notice to Ms. Li. I do think it appropriate, however, that Ms. Li must forthwith provide written notice to Mr. Li if she intends to do so, and I order her to do so.

Conclusion

[259] Ms. Li converted funds owned by Mr. Li in the amount of \$423,900. She is liable to Mr. Li for conversion.

[260] Mr. Kim is also liable to Mr. Li in conversion.

[261] Both Ms. Li and Mr. Kim have benefited from and been unjustly enriched by the conversion.

[262] Ms. Li has failed to repay the Loan to her father. She is indebted to Mr. Li for the full amount of the Loan. Mr. Li shall have judgment in the amount of \$10,000 against Ms. Li. There is no interest payable except for post-judgment interest.

[263] I also order a tracing and an accounting by the Registrar in respect of the use(s) to which Ms. Li has put Mr. Li's funds.

- [264] The Registrar shall also conduct an accounting to assess the monetary benefit enjoyed by Mr. Kim of Mr. Li's converted funds for the purpose of establishing the quantum of Mr. Kim's liability to Mr. Li.
- [265] The Registrar shall conduct an inquiry to determine the relative interests of Mr. Li and Ms. Li to the Townhouse in proportion to its current market value. In the interim, Mr. Li is entitled to file a certificate of pending litigation against title.
- [266] The Registrar's reports, including recommendations, shall be provided to the Court and the parties. Following delivery of those reports, Mr. Li shall make his election in respect of any other remedy, including any proprietary remedy or remedies he asserts, and from there, arrange for a further hearing in which to determine his entitlement to those remedies, including the proprietary remedy he claims to the Townhouse. The quantum of Mr. Li's monetary judgment for conversion shall also be determined.
- [267] However, before that hearing takes place, but after the Registrar's reports are delivered and after Mr. Li delivers written notice of his election (as spoken of in Ruwenzori Enterprises) to the defendants, the parties shall arrange to appear before me on a judicial management conference to establish the manner in which the hearing shall be conducted.
- [268] The parties may also address costs, although they should consider whether that should occur following receipt of the Registrar's reports.

"Walker J."

The Honourable Mr. Justice Walker

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Prepared on 29 October 2026 · Esheria