

CANADA / JUDGMENT

Lo v. Cheng

2025 BCSC 2686

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Supreme Court of British Columbia

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2025 BCSC 2686 Lo v. Cheng

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Lo v. Cheng,

2025 BCSC 2686

Date: 20251121

Docket: S230917

Registry: Vancouver

Between:

Cindy Lo

Plaintiff

And

Nick Kaleung Cheng and

Jessica Lo also known as Jessica Cheng

Defendants

And

Cindy Lo

Defendant by way

of Counterclaim

Before: The Honourable Justice Fowler

Oral Reasons for Judgment

The Plaintiff/Defendant by Counterclaim, appearing in person:

C. Lo

Counsel for the Defendants:

M. Morinaga

The Attendee, Courtney Lo, appearing in person:

C. Lo

Place and Dates of Trial:

Vancouver, B.C.

March 31, 2025

April 1-4, 2025

May 14-15, 2025

June 13, 2025

Place and Date of Judgment:

Vancouver, B.C.

November 21, 2025

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Introduction

- [1] THE COURT: This case involves a dispute about who owns a townhouse on Alder Street in Richmond, British Columbia, that was purchased in 2007. It is also a dispute between family members.
- [2] At the time of the purchase of the townhouse, the plaintiff, Cindy Lo ("Cindy"), was in common law relationship with the defendant Nick Cheng ("Nick"). The other defendant, Jessica Cheng ("Jessica"), is Cindy's daughter from a previous marriage.
- [3] After Cindy and Nick separated, Nick and Jessica commenced a relationship. They are now married and have two children.
- [4] Although the events that underlie the dispute about the ownership of the property arose in the context of a common law relationship between Nick and Cindy, because of the elapse of time, this is not a family law claim for the division of property. The defendants, Nick and Jessica, have held title to the townhouse as joint tenants since the date of purchase in the summer of 2007. The plaintiff, Cindy, claims that she paid Nick \$15,000 towards the down payment of the townhouse and that she and Nick agreed that Jessica's interest in the townhouse would be held in trust for Cindy's benefit.
- [5] Cindy seeks a declaration that Jessica holds a 50 percent interest in the townhouse in trust for Cindy and seeks an order transferring and conveying the 50 percent interest to her.
- [6] Nick and Jessica dispute that there was any agreement with Cindy that Jessica would hold her interest in the townhouse for the benefit of Cindy. Nick disputes that Cindy contributed anything to the down payment and disputes that Cindy contributed anything towards the payment of the mortgage or the costs associated with owning the property. Cindy claims that while she did not contribute to the payment of the mortgage or the operating expenses of the townhouse, she contributed her time and effort assisting Nick with his business, Kees Tae Kwon Do.
- [7] Nick and Jessica have brought a counterclaim against Cindy. They claim that Cindy has lived in the townhouse as a tenant further to a valid tenancy agreement since it was purchased in 2007, and that Cindy has never paid any of the agreed rent. Cindy continues to live in the townhouse without paying any rent.

- [8] Nick and Jessica seek a declaration that Cindy is wrongfully in possession of the townhouse and is committing trespass. The defendants seek an order that she vacate the townhouse. Nick also claims that he lent Cindy \$32,000 as a business loan which she agreed to repay upon demand, but she has refused to repay him. Nick seeks an order for damages in the amount of the loan.

Overview of the Trial

- [9] On the first day of the trial, Cindy applied to adjourn the trial because she had parted ways with her lawyer at the end of February or early March. However, Cindy also indicated that she was ready to proceed.
- [10] I dismissed the adjournment application because I was satisfied that the prejudice to the defendants, who cannot sell the townhouse because of a certificate of pending litigation nor take possession of the townhouse because of an order of this Court, outweighed Cindy's interests particularly because, based on the pleadings, the issues are not particularly complex.
- [11] Consequently, during the trial, Cindy was self-represented. She received assistance from her other two adult daughters and a lawyer from a pro bono legal clinic.
- [12] Cindy testified and was cross-examined by counsel for the defendants. Cindy called three other witnesses as part of her case: Chin Wai Lee, who is also known as Christina Lee, and Evan Chow, both were active in the Kees Tae Kwon Do programs, and one of her daughters, Cassidy, who is of course a younger sister of the defendant Jessica. In addition to the testimony of witnesses, Cindy relied upon a binder of documents and text messages, screenshots of email receipts for e-transfers to Nick, and some of the documents in four binders of materials filed as exhibits by the defendants.
- [13] Both Nick and Jessica testified in their case. In addition, the defendants called two people who were working or had worked at the Kees Tae Kwon Do. The defendants also relied upon the four binders of materials filed as exhibits.
- [14] Despite the unmistakeable emotional pain felt by the plaintiff, the parties were respectful and polite toward each other throughout the trial. I thank each of them for that.

Pleadings

- [15] In her notice of civil claim filed on February 9, 2023, the plaintiff seeks a declaration that Jessica holds a 50 percent interest in the property in trust for Cindy, the plaintiff. Cindy seeks an order transferring and conveying her 50 percent interest to her. She also seeks an accounting of the property that she claims is subject to a resulting or constructive trust, interest, and costs.

- [16] Nick and Jessica dispute the existence of any resulting or constructive trust and denied that Cindy has, at any time, been the beneficial owner of any interest in the townhouse. Rather, they claim that Cindy was always a tenant pursuant to a tenancy agreement, that she is in default of that agreement, and has been issued with reasonable notice to vacate.
- [17] Nick and Jessica have also filed a counterclaim in which they seek extensive relief for unpaid rent and utilities. Furthermore, if Cindy is found to have a beneficial interest in the property, the defendants seek an order for occupation rent to be set off against any beneficial interest, and an order that Cindy pay her proportionate share of mortgage and other expenses.
- [18] Finally, the defendants are seeking an order for vacant possession and an injunction permanently enjoining Cindy from being in possession or accessing the townhouse.

Summary of the Evidence

- [19] I heard a lot of evidence about the relationship between the parties over many years. Most of that evidence does not assist me in resolving the main issue in this case, being whether Cindy has a 50 percent interest in the townhouse. Much of the evidence about the circumstances of the parties in the years leading up to the purchase of the property is also not in dispute.
- [20] Cindy and her ex-husband, Samuel Lo ("Samuel"), when they were together, had four children. In 2006, the time when Nick and Cindy started living together, the ages of the children were as follows: Jessica was 19, Cody was 10, Courtney was nine, and Cassidy was three.
- [21] In 2004, Cindy and Samuel were finalizing their divorce. Samuel owed Cindy significant amounts in child support arrears and the Family Maintenance Enforcement Program was involved. I understand that both Cindy and Samuel declared bankruptcy in around 2004.
- [22] In 2005, Cindy and the children moved from Calgary, Alberta to Richmond, British Columbia. Cindy wanted her children to be involved with taekwondo. This is how she met Nick, who was working at a studio in Vancouver called Kees Tae Kwon Do. Not long after Nick met Cindy and the children, he started coming to Cindy's home on Gilbert Road frequently.
- [23] In early 2006, Nick moved into the Gilbert Road property. Nick contributed \$875 towards rent. It is not clear from the evidence what the total rent was and therefore what proportion Nick was paying. This is not important to the issues I must decide.
- [24] All Cindy's children were heavily involved in taekwondo. The evidence is that after 2006, they no longer paid any fees for this activity. By 2006, Jessica was employed at Kees Tae Kwon Do, except when she was attending the University of British Columbia, Okanagan campus, between September 2006 and April 2007.

- [25] Cindy and Nick were living as common-law partners during this period. Documents filed during the trial show that Nick and Cindy filed taxes as common law partners for the years 2006 and 2007. I find that Nick and Cindy separated in 2009. Cindy has resided in the townhouse since it was purchased.
- [26] In January 2023, Nick issued a notice to vacate the townhouse by March 31, 2023. On February 9, 2023, Cindy commenced her claim and has resisted all efforts to have her leave the property. To maintain her single occupancy of the townhouse, in the summer of 2024, Cindy agreed to pay \$1,200 per month rent and \$300 per month in arrears. She paid the sum of 3,000 in the summer of 2024, but has paid nothing more since.

The Townhouse Purchase

- [27] In the summer of 2007, Nick started to look for a property for the family to live in. It made little sense to him to pay rent when they could pay a similar amount in mortgage payments on a property. The townhouse was purchased in the summer of 2007 for approximately \$400,000. Nick paid the minimum down payment of \$20,000. Because the down payment was only five percent, Nick also had to pay Canada Mortgage and Housing Corporation fees. The Land Title Act, R.S.B.C. 1996, c. 250 Form B shows that Nick and Jessica own the townhouse as joint tenants. They were also joint borrowers on a mortgage from the Bank of Montreal with a principal amount of \$391,004.30.
- [28] In 2017, the Bank of Montreal mortgage was replaced by a mortgage from the Bank of Nova Scotia. It is not disputed that Cindy has continued to reside in the townhouse since it was purchased. Nick left the townhouse in the spring of 2009 and moved to live with his family. He testified that he considers his intimate relationship with Cindy to be over in 2009. Jessica's evidence is that Cindy told her that by 2009, she was no longer in a relationship with Nick. Certainly, Nick's letter to Canada Revenue Agency in November 2009, notifying the agency that he and Cindy are no longer common law spouses, confirms that their relationship was over.

Expenses for the Townhouse

- [29] Multiple documents were filed by the defendants, largely to establish the very significant amount Nick has paid in mortgage expenses, taxes, and utilities for the Alder Street property since it was purchased in September 2007.
- [30] I have reviewed these documents. I find that the amounts submitted by the defendants in their closing submissions are reasonable. Some of the amounts are lower than the true costs, because receipts are no longer available. Therefore, the approximate amounts are: mortgage payments, \$380,000; property taxes, \$22,500; strata fees, \$44,000; hydro, \$16,500; gas, \$1,500; home insurance, \$5,500; cable and internet, \$9,500.

- [31] In addition to these amounts, Nick assisted Cindy with payments for car leases, which he estimated at \$100,000. Nick assisted with a loan for Cindy to purchase a hair salon. He also paid the hydro and insurance for the salon. Apart from the evidence I discuss below, there is no evidence that Cindy contributed in any meaningful way to any of the costs of purchasing or maintaining the townhouse.

Issue 1 - Does Jessica Hold a 50 percent Interest in the Townhouse in Trust for Cindy?

Evidence

- [32] Cindy testified because the lease on the rental property on Gilbert Road was due to expire in July 2007, Nick suggested they look to purchase a property together rather than to continue to pay rent. Cindy said she was concerned about her bankruptcy and divorce settlements, so Nick suggested he would go on title alone. I note that very few details about the bankruptcy or divorce were provided to the Court.
- [33] According to Cindy, she was not comfortable with the family home being in Nick's name alone, so she suggested that her eldest daughter Jessica, who was then 20, also go on title. She testified that both Nick and Jessica agreed to this. Cindy maintains that Jessica holds a 50 percent interest in the townhouse in trust for her.
- [34] Cindy testified that the purchase price was 410,000 and Nick paid the down payment of \$20,000 on the understanding that she would pay her half of that amount when she received support arrears from her ex-husband Samuel. I note that if the purchase price was \$410,000, the minimum down payment would have been \$20,500.
- [35] Cindy's evidence about many of the important details surrounding the purchase of the townhouse were surprisingly vague. She did not know the amount of the mortgage, the type of mortgage, for example whether it was a fixed or variable rate, or the mortgage term. She testified that she believed the monthly payment was \$2,550 a month. In fact, the mortgage payment in 2007 was approximately \$2,060.
- [36] Nick testified that as early as 2006, he started looking at possibly buying a property, as paying rent made no financial sense to him. He acknowledged that they looked at properties together as a family, although he looked at some on his own. He found the townhouse in the spring of 2007 when it was still under construction. It was in his price range. Nick recalled talking to Cindy about the townhouse and about financial matters more generally. However, she was dealing with her bankruptcy and divorce so she was not interested in being a part of the purchase.
- [37] Nick recalled that he was pre-approved for mortgage funding of between \$360,000 and \$380,000, but not the amount for the townhouse. He explored options with family and friends, but they were unable to assist. Eventually, Nick settled on asking Cindy if he could ask Jessica to co-sign for the mortgage, because by this point, Jessica was working for him, he knew her salary, and expected that as joint purchasers they would be approved for

funding. Initially Jessica was unsure. Nick explained what it meant to co-sign the mortgage and the potential liability if Nick defaulted on the mortgage. Ultimately, Jessica agreed to help Nick obtain the funding for the townhouse. Jessica contributed nothing towards the down payment.

- [38] Nick testified that Cindy never asked Jessica to go on title instead of her. The only purpose for Jessica to get involved was to assist in obtaining the mortgage funding.
- [39] During cross-examination by Cindy, Nick was referred to lengthy portions of his discovery evidence. Unquestionably, Nick's recollection of many of the details of conversations about the purchase of the townhouse were vague, as was his recollection of the order of events, for example, when he first approached Jessica. Given the passage of time, this is hardly surprising.
- [40] After listening to Nick's testimony, my overall sense is that he wanted to purchase this particular property, that he thought it would be a good investment for him and a nice place to live for Cindy and the children. However, he could not obtain the necessary financing alone. The plan to ask Jessica was likely not thoroughly thought out by anyone. Nick did what he needed to do to ensure he could purchase the townhouse.
- [41] Cindy also cross-examined Nick about what benefit there was to Jessica to be a party to the mortgage but have no share of the property. Nick thought that Jessica was doing this as a favour to the family and that there may have been some financial benefit to Jessica in developing a good credit score.
- [42] However, his evidence has remained consistent that he always intended to purchase the property alone, that it was never intended that Jessica would hold any interest in the property on behalf of Cindy, and Cindy never agreed to contribute to the down payment at some later date.
- [43] Jessica also testified. Her recollection of the details of her involvement in the purchase of the townhouse in 2007 were also somewhat uncertain. She recalled overhearing conversations between Nick and Cindy about Nick purchasing a property for all of them to live in. She recalled that in the summer of 2007, Nick asked her if she was willing to co-sign the mortgage to assist with the purchase. He knew she had no money and knew that she was hesitant to become involved. He explained the risk to her if he did not make payments. She was reassured by the fact that she would at least be on the title to the townhouse.
- [44] Jessica recalled talking to Cindy at the time, but it was only to tell her what Nick had asked her to do. Jessica recalled Cindy telling her that she was an adult and it was entirely her decision. Jessica confirmed that Cindy did not ask her to go on title and hold the property in trust for her. Cindy never told Jessica that any of the portion of the townhouse belonged to her.

- [45] Jessica recognizes now how naïve she was and that she did not know her rights, but Jessica confirmed that she did not then or even now consider the townhouse her property.
- [46] Jessica was cross-examined by her mother, Cindy. Jessica denied all suggestions from Cindy that there had been conversations about Jessica going on title instead of Cindy because Cindy had financial problems. Jessica's evidence was these conversations did not take place, "she never had this conversation with me" and "this conversation did not happen."
- [47] Jessica was thoroughly cross-examined by Cindy, a process that could not have been easy for either of them. Throughout Jessica's evidence, I remained mindful of the fact that she is now married to Nick and therefore has a financial interest in the outcome of this case. Jessica also has an emotional bond with Nick and sadly, quite obviously, little emotional connection currently with Cindy. However, despite these vested interests, there was nothing in the evidence to suggest that Jessica was being untruthful.
- [48] Cindy has animosity towards Nick. She is understandably hurt that a few years after their relationship ended, Nick commenced an intimate relationship with Cindy's eldest daughter. The best indication of Cindy's animosity is her statement to her ex-husband Samuel in 2021 that both Nick and Jessica are "master liars".
- [49] I am also aware that the outcome of this case could have a significant impact on Cindy, who is currently living rent-free in the townhouse. If I determine that Cindy has no beneficial interest in the home, she will likely be evicted because she has breached a tenancy agreement with Nick by not paying rent or, if there is no tenancy agreement, because she is trespassing.

Analysis

- [50] Despite the extensive evidence I heard about the relationship between Cindy and Nick for many years, including numerous references to informal agreements or arrangements about who would pay what and who would do what in the running of the family home, and even for many years later after Nick and Cindy separated, the evidence I must consider for determination of the plaintiff's claim is much narrower. Was there an agreement between Nick, Cindy, and Jessica that Cindy would have a 50 percent interest in the townhouse?
- [51] The starting point to my analysis is to identify who has the burden of proof in this case. As stated in *Demir v. Peyman*, 2009 BCSC 445 at para. 9, under the Land Title Act, proof of the registered owners of a property is conclusive at law and in equity that the person or persons named in the title as registered owner is:

... indefeasibly entitled to an estate in fee simple to the land described in the title. In short, the law begins with the presumption that if your name is on the title in the Land Title Office, you own that property.

- [52] However, the statutory presumption is subject to equitable principles, which includes the enforcement of any agreement between the parties.
- [53] In this case, Cindy asserts that there was such an agreement. She asserts that Jessica agreed to go on title in her place. Given that Nick and Jessica are on title as the owners of the townhouse, Cindy bears the onus of proving that there was such an agreement. There are no written agreements, contemporaneous notes, or other records of any kind memorializing, in even a very rudimentary way, Nick and Cindy's understanding of any agreement about the purchase of the townhouse.
- [54] I do not believe Cindy that there was an agreement with Jessica that Jessica would hold an interest effectively in trust for Cindy. I accept Nick and Jessica's evidence that there was no such agreement. I accept that the arrangement for Jessica to go on title was to facilitate obtaining mortgage funding only.
- [55] Notably, in a text message exchange with Nick that started on January 23, 2023, when Nick told her that he had a purchaser for the townhouse, Cindy claimed an interest in half the profits of the sale of the property on the basis that they had invested in the property together as common law partners. In a later message, she tells Nick that she has received advice that she has a beneficial interest in the property for the contributions to the original purchase and mortgage "according to our original agreement". There is no mention of Jessica being on title in place of Cindy, and the evidence simply does not support that Cindy contributed either to the purchase or the mortgage.
- [56] Cindy's conduct regarding the townhouse undermines her evidence that she has a 50 percent interest in the property. Most notably, Cindy has contributed nothing to the cost of purchasing or maintaining the property. She has lived there for many years essentially free of any financial responsibilities toward the property.
- [57] Most critically, in 2017, Nick and Jessica used the equity in the townhouse to borrow funds from the Bank of Nova Scotia to help purchase a home for themselves. This refinancing increased the mortgage on the townhouse significantly, effectively removing a large amount of equity from the townhouse. According to her evidence, Cindy simply agreed to this.
- [58] In January 2023, Cindy was discussing by text message with her ex-husband Samuel purchasing the townhouse from Nick. Cindy clearly knows that the mortgage is \$600,000. Cindy tells Samuel that Nick needs cashflow quick. Samuel and Cindy discuss a price of \$750,000, noting that Nick would receive \$150,000. Of course, if Cindy had a 50 percent interest in the property, Nick would not receive \$150,000. Notably, Cindy never said anything about a claim to 50 percent of the property.

- [59] I am also concerned about Cindy's credibility. In August 2023, Cindy swore an affidavit in which she deposes that her signature on the tenancy agreement for the townhouse dated September 1, 2007, was a forgery. Ironically, her signature on this affidavit closely resembles the signature on the tenancy agreement. I do not need to resolve this issue with a lay handwriting analysis because, in a subsequent affidavit, Cindy confirms that she did in fact sign the tenancy agreement.
- [60] I have no hesitation concluding that when she swore under oath that her purported signature on the tenancy agreement was a forgery, she was knowingly being untruthful. I do not believe this was a simple mistake as she suggests in her subsequent affidavit. She knew she was lying. This causes me to be seriously concerned about her credibility generally.
- [61] Based on my accepting the evidence of Nick and Jessica that there never was any agreement with Cindy, coupled with concerns about Cindy's credibility generally and the totality of the evidence which shows that Cindy did nothing to assist in the maintenance of the townhouse to which she now claims a 50 percent interest, I have no hesitation in concluding that Cindy has failed to prove that she has a 50 percent interest in the townhouse.
- [62] Cindy cannot establish that she is entitled to the property under a resulting trust because she never had an interest in the property to begin with. The townhouse was purchased for consideration from an unrelated third party. In addition, Cindy never contributed any funds towards the purchase of the property. There was, as I have found, no intention that Cindy would have an interest in the property.
- [63] Cindy's most viable claim, at least legally, is a constructive trust on the basis that Nick has been enriched by Cindy's contributions to a joint family venture (see *Valerio v. Silveira*, 2011 BCSC 1055).
- [64] The evidence does not satisfy me that there was a joint family venture. Cindy and Nick were living as common law partners for approximately two years. During this time, it is unclear what common goals they had, other than Cindy wanted her children involved in taekwondo. Nick provided training for free and Cindy made some modest contributions to the taekwondo studio.
- [65] I have considered and reviewed the evidence of the other witnesses called by Cindy. At best, this evidence provides a picture of a mother dedicated to her children's well-being, particularly as it relates to the children being meaningfully engaged in all aspects of taekwondo. There was very little integration of their finances. Cindy was dealing with a bankruptcy and a divorce. She was struggling to recover support payment arrears from her ex-husband. Given these circumstances, it seems reasonable that the parties would not integrate their finances very much.

- [66] I accept that Cindy gave some money to Nick. For example, she gave him \$15,000 on July 27, 2010, almost three years after the purchase of the townhouse. I do not accept her evidence that this was her 50 percent contribution to the down payment of the townhouse. The down payment was \$20,000. Cindy's 50 percent contribution would therefore have only been \$10,000. Her explanation for why she gave Nick \$15,000 did not make sense.
- [67] Considering the amount Nick would have already paid towards the acquisition and maintenance of the townhouse, and considering that Nick moved out in 2009, Cindy's payment to him of \$15,000 was, I find, her effort to pay Nick some money towards her accommodation.
- [68] As stated earlier, based on the evidence I heard, I cannot determine what agreements the parties had. I do not accept Cindy's vague evidence that she had an agreement with Nick to review what to do with the townhouse in 2021, when her youngest child, Cassidy, turned 18. At best, the evidence supports Nick's testimony that he held-off evicting Cindy from the townhouse until Cassidy was 18.
- [69] The most important evidence that undermines any equitable claim for unjust enrichment is that Cindy's contribution, taken at their highest, are dwarfed by the expenses that have been incurred by Nick. Cindy has lived in the townhouse for about 18 years, from 2007 to 2025. The most reliable evidence, based on an appraisal done for the Bank of Montreal in September 2016, is that the townhouse could have been rented in 2017 for \$2,750 per month. Given that 2017 is approximately the mid-point of the time period that Cindy has resided in the townhouse, I accept that this amount roughly approximates what the average rent at the townhouse would have been over the last 18 years. Based on this amount, the value to Cindy of her occupancy of the townhouse for the last 18 years is nearly \$600,000. If the period is shortened, being from when Cindy became the sole occupant of the townhouse, the value to her is about \$540,000.
- [70] Taken at its very best, Cindy's direct financial contributions to Nick are:
- 1) July 27, 2010, Cindy transferred \$15,000 to Nick from a more-than-\$50,000 deposit from Family Maintenance Enforcement. Cindy testified this was her contribution to the down payment of the townhouse. I do not accept that evidence.
 - 2) From 2020 to 2022, the period that included the COVID pandemic, Cindy e-transferred a total of approximately \$13,000 to Nick.
 - 3) Cindy claims there were many sums from 2006 to 2025, but has failed to provide any evidence to substantiate her claim, despite being asked during her examination for discovery to provide complete bank records.
- [71] By any measure, this was not a joint family venture.
- [72] Nick's financial contributions far exceed Cindy's financial or other contribution. This was an entirely one-sided relationship, not a joint venture.

- [73] Nick left the common law relationship in 2009, yet he has continued to contribute to Cindy's housing needs for another 16 years. There is no evidence that Cindy contributed in any meaningful way to Nick during this period of time. It is hard to understand why Nick has continued to contribute so much for so long, but it is certainly not because Cindy was contributing equally in other ways. Nick has not been unjustly enriched. The evidence strongly supports the conclusion that it is Cindy who has been enriched.
- [74] Based on all the evidence, there was no agreement that Jessica hold a 50 percent interest in the townhouse to the benefit of Cindy. There was no resulting trust because of any contribution from Cindy towards the purchase of the property. In addition, there is no basis upon which I can find a constructive trust on the basis that Nick has been unjustly enriched by Cindy's contributions to the acquisition, preservation, or maintenance of the townhouse. The plaintiff's claim is dismissed.

Issue 2. The Defendants' Counterclaim

- [75] The defendants' counterclaim seeks expansive relief, including:
- a) damages for unpaid rent under a tenancy agreement that they argue has been in existence since September 1, 2007;
 - b) a declaration that the plaintiff has been unjustly enriched through her occupancy of the townhouse without paying the defendants anything for that occupancy;
 - c) an order for restitution in respect of that enrichment;
 - d) a writ of possession; and
 - e) an injunction to restrain the plaintiff from continuing to trespass on the property.
- [76] As a preliminary matter, I conclude that I have jurisdiction to determine whether the dispute over the occupancy of the townhouse arises out of a tenancy or landlord/tenant relationship. If there is no tenancy, the dispute resolution mechanisms of the Residential Tenancy Act, S.B.C. 2002, c. 78 do not apply.

Was There an Enforceable Tenancy Agreement?

- [77] Except for the evidence about the existence or otherwise of a tenancy agreement, much of the relevant evidence has already been discussed. The defendants rely on a written, signed tenancy agreement for the townhouse that they claim is valid from September 1, 2007. A copy of this tenancy agreement was filed as an exhibit. The tenancy document states that the term of the lease commences at 12 noon on September 1, 2007. Superficially, this document would seem like compelling evidence of the existence of a tenancy agreement between Nick and Cindy. However, Cindy denies that she signed a tenancy agreement with Nick for the townhouse that commenced on September 1, 2007.

- [78] The mortgage documents for the purchase of the townhouse were executed on September 27, 2007. It seems incomprehensible that Nick and Cindy would sign a tenancy agreement for the townhouse before the purchase transaction was completed.
- [79] In addition, on September 1, 2007, Nick and Cindy were still living in a common law relationship. The tenancy agreement indicates the landlord's address is 2259 East 37th Avenue in Vancouver. This is where Nick moved in 2009 when he separated from Cindy.
- [80] I do not accept that the tenancy agreement dated September 1, 2007, is genuine. It was not prepared in September 2007. It must have been prepared later. There was no tenancy agreement between Nick and Cindy that started on September 1, 2007.
- [81] In addition, both parties acknowledge that they relied upon mock tenancy agreements effectively for potentially fraudulent purposes. Cindy relied on a tenancy agreement to attempt to prove her daughter's residence for school purposes, and Nick relied on tenancy agreements as proof of income from the property to assist with obtaining bank loans. For example, there is another tenancy agreement dated January 1, 2020, that was prepared to assist Nick with loan financing.
- [82] On April 2, 2020, Nick texted Cindy, asking for a different tenancy agreement to be signed because he had "to prove", presumably to the bank, that he had collected rent over the years of any agreement. Of course, as was clear from the evidence, Nick did not receive regular income from the townhouse. I accept that on November 14, 2009, Nick advised the Canada Revenue Agency that he and Cindy have a landlord-tenant relationship. However, this letter was written for the purposes of confirming that Nick and Cindy were no longer common law partners. I do not find this letter, when considered with the other evidence, is sufficient to prove a landlord-tenant relationship between Nick and Cindy.
- [83] It is clear from the evidence that Nick did not enforce any tenancy. Even in January 2023, in text message communications between Nick and Cindy about a prospective purchase of the townhouse, Nick does not mention the tenancy agreement. He simply tells Cindy if she thinks she owns half the townhouse, she will have to repay him with 50 percent of the mortgage payments.
- [84] I have reviewed all the testimony of the witnesses, including their affidavits that were filed as exhibits at this trial, and I cannot conclude that the defendants have proven that there was a tenancy agreement between Nick and Cindy. I do not accept Nick's evidence that there was an agreement that Cindy would pay rent and that the written tenancy agreement confirms this. The evidence simply does not support that the parties acted like landlord and tenant. It is incomprehensible that if this was a landlord-tenant relationship, that Nick would tolerate the non-payment of rent for so many years.
- [85] The failure of Cindy to pay rent is the best evidence that Nick was not enforcing a tenancy, either written or implied.

[86] Based on all of the evidence, it is impossible to reliably discern what the parties had agreed to in respect of Cindy's occupation of the townhouse. The defendants have failed to prove that there was a tenancy agreement.

Is Cindy Trespassing?

[87] It is clear, however, that on January 27, 2023, Nick gave Cindy notice to vacate the townhouse by March 31, 2023. I have already found that Cindy has no ownership interest in the townhouse, and I have found that there is no tenancy relationship between Nick and Cindy.

[88] In the case of *Landmark Shawn Oaks Development Ltd. v. Fallis*, 2021 BCSC 883, Justice Wilkinson sets out the legal framework for the tort of trespass:

[59] The tort of trespass occurs when the offender occupies another's land without permission: see *Willow Beach* at para. 26. Landmark is the owner of the Unit. The plaintiffs informed Mr. Fallis in writing through legal counsel that he was required to provide vacant possession of the property. He remains in occupation of the property without Landmark's permission.

[60] I therefore find that Mr. Fallis is liable for trespass. His unlawful occupation of the Unit began on July 9, 2019, and has continued since then.

[61] While trespass is actionable without proof of damages, a plaintiff is entitled to be compensated for damages sufficient to place them in the same position as if the wrong had not occurred.

[62] Damages will include compensation for loss of use of land and loss of amenities: see *Kates v. Hall* (1991), 53 B.C.L.R. (2d) 322 (C.A.).

[63] The continuation of a trespass constitutes a fresh trespass and is actionable as such: see *Johnson v. British Columbia Hydro and Power Authority* (1981), 123 D.L.R. (3d) 340 at 347, 27 B.C.L.R. 50 (S.C.).

[89] Once Nick, the owner of the townhouse, gave notice to Cindy to leave by March 31, 2023, Cindy's permission to occupy the townhouse ended. Cindy's continuing occupation of the townhouse without Nick's permission means that she is liable for trespass. The defendants are entitled to damages for trespass.

[90] I assess damages based on the fair market rent assessment in the amount of \$2,750 per month that was conducted in September 2016. Undoubtedly the potential rentable value of the townhouse is greater than that now. However, the defendants have not produced any evidence of what that value is.

[91] I assess damages in the amount of \$72,000 based on the approximately 26 months that Cindy has continued to occupy the townhouse without permission of the owner. In addition, the defendants are entitled to damages of \$90 for each day that Cindy has continued to occupy the townhouse after this trial concluded.

Order for Vacant Possession

- [92] As set out in Landmark, for an order for vacant possession, the defendants must establish that the plaintiff has title to the property, in this case that is the defendant; that the plaintiff is currently in possession of the property; and that the defendant intends to regain possession of the property.
- [93] I am satisfied that none of these matters are now in dispute. The defendants hold title to the townhouse. Cindy is currently in possession, and the defendants intend to regain possession of the townhouse.
- [94] I make an order for vacant possession on the following terms:
- a) that Cindy delivers all keys to the townhouse to Nick or Jessica or their counsel;
 - b) that Cindy removes all her personal possession, but not fixtures, from the unit; and
 - c) that Cindy leaves the unit in a reasonable state of cleanliness.
- [95] Subject to any further submission from the parties, this order will take effect within 60 days of the date of this judgment.

Injunction

- [96] The defendants are also seeking an injunction permanently prohibiting Cindy from trespassing on the property. Given the order for vacant possession, I do not currently consider an injunction to be necessary. If Cindy does not vacate within 60 days, the defendants can seek further relief at that time.

Repayment of Business Loan

- [97] Unquestionably, the parties had a complicated, intertwined business and personal relationship, almost all of which was undocumented. The state of the evidence does not persuade me that Cindy must repay Nick for a \$32,000 loan that was used to purchase and operate a hair salon. When this loan was taken out, I conclude that the hair salon was a joint venture between Nick and Cindy who were, in 2008, still in an intimate relationship. If the business had been a success, both would have benefited.
- [98] There is no reliable evidence of what discussions occurred between Nick and Cindy about who was responsible for the repayment of the loan. The evidence does not persuade me that Cindy owes Nick money for this loan.

Conclusion

- [99] For the reasons set out, and having considered the submissions of Cindy and counsel for the defendants, I make the following orders:
1. The plaintiff's claim to a 50 percent interest in the townhouse is dismissed.

2. The defendants' counterclaim for damages for the repayment of a \$32,000 business loan is dismissed.
3. The defendants' counterclaim that the plaintiff was bound by a tenancy agreement in respect of the townhouse is dismissed.
4. The plaintiff is liable to the defendant for damages for trespass, which trespass commenced on March 31, 2023, and continues, in the amount of \$72,000 to the end of May 2025. I further assess damages for trespass in the amount of \$90 per day for each day after May 31, 2025.
5. Vacant possession of the townhouse with an address of Unit 21, 6099 Alder Street, Richmond, British Columbia, and a legal description of Strata Lot 46, Section 10, Block 4, North Range 6 West, New Westminster Strata Plan BCS 2257, with the following terms:
 - a) within 60 days of the date of this judgment, that Cindy delivers all keys to the townhouse to Nick or Jessica or their counsel;
 - b) that Cindy removes all her personal possessions but not fixtures from the unit; and
 - c) that Cindy leaves the unit in a reasonable state of cleanliness.
6. All other relief sought by the defendants in their counterclaim is dismissed.
7. The plaintiff's claim has been dismissed in the entirety, whereas the defendants have been substantially successful. They are therefore entitled to their costs.

[100] Thank you. Any further comments, counsel?

[101] CNSL M. MORINAGA: Yes, Justice, the plaintiff is self-represented.

[102] THE COURT: Yes.

[103] CNSL M. MORINAGA: So I would just like to make sure the plaintiff understands the next step, which is to enter the order and that --

[104] THE COURT: The order commences as of today's date.

[105] CNSL M. MORINAGA: Yes.

[106] THE COURT: The order will be entered, which means that it will be prepared by counsel for the defendants. Ms. Lo, you will have an opportunity to review it and sign it. If there are any difficulties in that regard, you can address me, but I do not expect there will be any difficulties. That order will then get entered in the registry of this courthouse, but the order takes effect from today's date. It does not take effect from when it is filed in the registry, that is a formality. As I have set out in these reasons, the 60 days for you to vacate the townhouse commences today.

[107] CNSL M. MORINAGA: Yes, thank you, Justice, and I would like the plaintiff to understand that the role of reviewing the order is to just make sure it aligns with what Your Justice has ordered, and that is it not a --

[108] THE COURT: That is exactly correct. The terms of the order are clearly articulated in my reasons. There should be no areas in which you disagree. It is not a complicated order.

[109] CNSL M. MORINAGA: Thank you, Justice.

[110] THE COURT: Thank you.

"The Honourable Justice Fowler"

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