
CANADA / JUDGMENT

McGrane v. Epp

2010 BCSC 1018

COURT

Supreme Court of British Columbia

DECIDED

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2010 BCSC 1018 McGrane v. Epp

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

McGrane v. Epp,

2010 BCSC 1018

Date: 20100720

Docket: S091075

Registry: Vancouver

Between:

Yvonne Rose McGrane

Plaintiff

And

Shirley Epp

Defendant

Before: The Honourable Madam Justice Loo

Reasons for Judgment

Counsel for the Plaintiff:

K. B. Friesen

Counsel for the Defendant:

D. B. Kirkham, Q.C.

Place and Date of Trial:

Vancouver, B.C.

November 30, December 1-4, 2009

January 18 and 19, 2010

Place and Date of Judgment:

Vancouver, B.C.

July 20, 2010

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A. INTRODUCTION

- [1] The plaintiff Yvonne McGrane is an 88-year-old widow. She has no children. Mrs. McGrane lives in a two-bedroom townhouse in Vancouver. Her sister Jean Pearson used to live next door to her in a one-bedroom townhouse. Miss Pearson died in January 2007 and Mrs. McGrane was the sole beneficiary of her sister's estate, including her townhouse.
- [2] Mrs. McGrane was dependent on her sister for companionship. Mrs. McGrane is in poor health and was partially dependent on her sister to help with the daily tasks of living--facilitated by their close living arrangement.
- [3] The defendant Shirley Epp is 69 years old. She used to be employed by the strata management company for the townhouse complex, and became friends with Mrs. McGrane and Miss Pearson.
- [4] This lawsuit is about the townhouse in which Miss Pearson used to live. At times I may refer to the townhouse as "Jean's townhouse".

- [5] Mrs. McGrane claims that shortly after her sister's death, it was agreed that Mrs. Epp would provide companionship and assistance to her and move into Jean's townhouse. In exchange, on her death, Mrs. McGrane would give Mrs. Epp the townhouse.
- [6] Mrs. McGrane complains that after six or seven months, the time that Mrs. Epp spent with her began "dwindling", and that Mrs. Epp always had a new excuse for not seeing her and not moving into Jean's townhouse.
- [7] Mrs. Epp had many concerns that had to be dealt with before she was willing to move into the townhouse. They included a concern that Mrs. McGrane could change her mind, that she could change her Will, and that she could die before Mrs. McGrane, in which case her son Graham would not inherit the townhouse. Mrs. Epp insisted that she be on title with Mrs. McGrane before she moved into Jean's townhouse. As a result, Mrs. McGrane and Mrs. Epp are both on title to the townhouse. Mrs. Epp had other concerns (which I will address later) and never moved into the townhouse. In February 2009 Mrs. McGrane and Mrs. Epp had a disagreement and this lawsuit is the result.
- [8] Mrs. McGrane claims that it was a fundamental term of their agreement that Mrs. Epp move into Jean's townhouse, and that Mrs. Epp holds her interest in the townhouse in trust for her. Mrs. McGrane seeks a return of Mrs. Epp's interest in the townhouse.
- [9] Mrs. Epp claims that Mrs. McGrane gifted the townhouse to her by a deed of gift. She claims that it was a fundamental term of their agreement that she provide companionship and assistance, which she did until Mrs. McGrane unilaterally terminated their relationship on February 9, 2009, "on the verge" of when she planned to move into the townhouse. She does not agree that it was a fundamental term of any agreement that she move into the townhouse.
- [10] Mrs. Epp counterclaims for a declaration that Mrs. McGrane has no right to sever the joint tenancy, and that Mrs. McGrane is legally required to transfer the townhouse to her son Graham, in the event she predeceases Mrs. McGrane. She further claims (at least by her pleadings), for exclusive possession and that Mrs. McGrane pay the property taxes and strata fees for her lifetime.
- [11] Alternatively, Mrs. Epp claims \$57,440 in quantum meruit for the time she spent providing companionship to Mrs. McGrane. The figure of \$57,440 is generally arrived at by claiming \$10 an hour for 35 to 48 hours per week from June 2006 to January 2009. Mrs. McGrane and others deny that Mrs. Epp spent that much time with her. Mrs. McGrane claims that after six or seven months, the time that Mrs. Epp spent with her began dwindling. Credibility is an issue. However, Mrs. Epp's claim in quantum meruit will only be considered if Mrs. McGrane's claim succeeds.
- [12] At times in my reasons for judgment I may refer to persons or witnesses by their first names, not out of disrespect, but because those are the names that may have been used in the evidence.

- [13] For the reasons that follow, I find that it was a fundamental term of the agreement between the parties that Mrs. Epp move into Jean's townhouse.

B. BACKGROUND

- [14] The townhouses of Mrs. McGrane and Miss Pearson are part of a 19-unit, two-storey row complex built in 1978 near Vancouver General Hospital ("VGH").
- [15] Mrs. McGrane and her husband Rory were the first occupants of the complex. They moved into their two-bedroom townhouse at unit 11 in the spring of 1978. The next new owners to move in were Phillip Waddell and his partner Ken Gracie. About a month later Jean Pearson moved into her one-bedroom townhouse at unit 12, next door to Mr. and Mrs. McGrane.
- [16] Mrs. McGrane was a registered dietician until she was 65 years old. Miss Pearson, who was four years older, worked at a shoe store until her mid-70s. The two sisters were very close to each other. They regularly attended the symphony and the opera together. They travelled extensively together. Apparently Mr. McGrane did not attend the symphony or opera, or like to travel. After his death, the sisters were inseparable.
- [17] Mr. Gracie was trained and worked as a social worker but has been a realtor for the last 20 years. Mr. Waddell, who is now 70 years old, worked as a social worker until his retirement about nine years ago.
- [18] For nearly 20 years, Mr. Waddell was the chair of the strata council, Mrs. McGrane was secretary, and Miss Pearson was treasurer. They (including Mr. Gracie) became close friends. Living in a fairly small townhouse complex has its advantages: the owners and neighbours all knew each other and often helped each other.
- [19] Lisa Bouma is a mental health and crisis program worker. Ms. Bouma has lived in the townhouse complex since 1990. Not long before Rory McGrane died, he asked Ms. Bouma to help his wife after his death. Mrs. McGrane wears a Lifeline Medical Alert and Ms. Bouma has always been the "number one call person". Ms. Bouma drops by to see Mrs. McGrane about twice per week and regularly talks to her on the telephone once or twice per week.
- [20] Mrs. McGrane's husband died about the time that Mr. Waddell and Mr. Gracie moved out of their townhouse in 1998. However, the two men continued to be close to the two sisters who had no living relatives. They treated Mrs. McGrane and Miss Pearson as if they were family. Mr. Waddell goes grocery shopping for Mrs. McGrane every week and he regularly sees her once or twice per week. Both men speak to Mrs. McGrane on the telephone frequently.
- [21] Mrs. Epp completed grade 12 and worked at secretarial jobs for three years before getting married. She has three sons who now range in age from 42 to 47. Her eldest son is Graham, her middle son is Tim, and Michael is the youngest.

- [22] In 1978 Mrs. Epp's marriage broke down and she was left a single mother of two sons. Tim lived with his father. Mrs. Epp received \$20,000 from her share of the family assets, and (it seems) nothing else.
- [23] In 1996 Mrs. Epp began working at The Property Shop, the strata management company that looked after the townhouse complex. Mrs. McGrane and Mrs. Epp spoke on the telephone from time to time, and occasionally the two sisters and Mrs. Epp met for lunch or dinner.
- [24] Around May or June 2005, The Property Shop went out of business and Mrs. Epp became unemployed. The three women saw more of each other and became close friends.
- [25] Mrs. Epp used to live in the basement suite of her son Michael's house in Surrey. In the spring of 2001 Michael was transferred by his employer to Ottawa, and he sold his house. Before he left for Ottawa, he purchased a 650 square foot condo in Burnaby for his mother to live in. He pays the mortgage and the taxes, but Mrs. Epp pays the strata fees. Mrs. Epp is of very modest means.
- [26] Around the beginning of 2006 Miss Pearson fell down the front stairs. Mrs. McGrane telephoned Ms. Bouma who was vacationing with her family on the Sunshine Coast but returned to help the two sisters that day and the following day.
- [27] Miss Pearson became incapacitated and spent all of her time the next six or seven months living at Mrs. McGrane's townhouse and sleeping on the living room couch. Miss Pearson never returned to live in her own townhouse. Her health deteriorated and in the summer of 2006 she was transferred to VGH where she stayed until she was transferred to UBC Hospital sometime in the fall. Around the beginning of the year she was transferred to Windermere Care Facility (across the street from VGH). She died in January 2007.
- [28] It was sometime during the summer of 2006 when Miss Pearson was at VGH and Mrs. McGrane was having great difficulty walking even the one block to VGH to see her sister (Mrs. McGrane was no longer driving by this time) that Mrs. Epp started helping Mrs. McGrane by driving her to the hospital and to her appointments. Mrs. McGrane was grateful for Mrs. Epp's assistance and told her so. Mrs. McGrane had season's tickets to the Vancouver Symphony Orchestra and always invited Mrs. Epp to join her.
- [29] Mrs. McGrane has osteoporosis and a dowager's hump. She also has leg ulcers on both legs, which throughout the times relevant to this action, were being treated by a nurse who came by twice a week to change her bandages. Mrs. McGrane walks with a cane, and is hard of hearing (she cannot hear out of her right ear). She is thin and frail.

- [30] Gayle Raphanel is a lawyer who first met Mrs. McGrane on March 22, 2007. She described Mrs. McGrane as competent at that time, although she was repetitive, wandered off-topic, and was distraught over her sister's death. She remains distraught over her sister's death. Ms. Raphanel has observed that Mrs. McGrane deteriorated significantly during the summer of 2009. She repeats herself more often, and is more confused. However, she remains competent, and understands the action she has brought against Mrs. Epp.
- [31] Mrs. McGrane needed assistance walking and getting into the witness box. She frequently did not understand or hear the question being asked of her, and she often gave inappropriate answers. She is very repetitive. The task of testifying made her extremely tired and the more tired she became the more confused she became. However, I find that she answered the questions as best she could. Most of her answers were quite brief, but to the point.

C. THE ARRANGEMENT BETWEEN THE PARTIES

- [32] Mr. Gracie saw Jean Pearson in the hospital just after the doctors had told her that she was going to die. They discussed how Mrs. McGrane was going to manage after her death. Mr. Gracie promised Miss Pearson that he and Mr. Waddell would look after Mrs. McGrane and the cat for the rest of their lives. (The cat has since died.)
- [33] It was around the time when Miss Pearson was at UBC Hospital that Mr. Gracie became aware of Mrs. Epp. Mrs. McGrane would mention the name Shirley, and that Shirley was taking her out to see Jean at UBC Hospital.
- [34] It was not until the day of Miss Pearson's funeral in early February 2007 that Mr. Waddell and Mr. Gracie met Mrs. Epp.
- [35] Mrs. McGrane was very distraught and angry about her sister's death. She had lost her companion, her last relative, and the person who she relied on to take care of her.
- [36] Mrs. McGrane told Mrs. Epp that she felt very alone and that she did not know who would be her companion and look after her. But she came up with an idea and told Mrs. Epp about it. In her examination for discovery, Mrs. Epp put it this way:

She'd like me to live in Jean's and be there for her like a companion, do much of what we were already doing together. I could still have my friends and family over there, which was fine with her, and she in return would give me Jean's unit when she passed.

[37] Mrs. Epp testified in cross-examination:

Q And she told you that she wanted you to live in Jean's - Jean's townhouse and look after her while living there, didn't she?

A Yes.

Q She also told you that if - if you lived in Jean's townhouse and looked after her, you would receive the townhouse upon her death?

A Yes.

Q That's what she told you?

A Yes.

Q During those - during that time period, right shortly after Jean's funeral, right?

A Yes.

[38] Mrs. Epp also testified regarding her reaction to Mrs. McGrane's proposal:

Q. Well, in fact she said that if you would be there as a companion and live in Jean's -

A Yes.

Q - then you would get the townhouse.

A Yeah, and that she was leaving the townhouse, yes.

Q Okay. But what's she saying is that you have to do something for her?

A Of course, of course.

Q Of course you understood that?

A Of course I understood that.

Q And initially, when you had this initial discussion with Yvonne, you didn't talk about the fact that you couldn't afford it. That - that discussion came a bit later, right?

A I'm going to repeat what I just said. As soon as she said that to me, I - the first words out of my mouth is "I can't - I couldn't afford it. I can't afford to live there, Yvonne."

Q And you explained to her why you couldn't afford to live there, right?

A Yeah, I said I thought it was too expensive.

Q And what was too expensive?

A - for my budget. Well, I - living there. I knew they paid more in strata fees. How much more, I couldn't tell you. I knew that she had electric heating that she paid for separately, to a two-floor unit and I lived in a small apartment with the heat provided and my maintenance fees. That's just to begin with. I - I just - and I knew I would need insurance and property tax money and on and on.

Q Okay. So you had some concerns. You raised these concerns with - with Yvonne, right, about her proposal?

A Yes, okay, yes.

Q Okay. And you raised the issue of strata fees?

A I told her I couldn't afford it, yes.

Q Okay. But you're paying strata fees in your son's residence?

A That's right.

Q Right?

A Yeah, yeah.

Q So you'd be just replacing those strata fees with other strata fees?

A Well, the strata fees would be more expensive at Jean's by probably 50 or \$60 a month.

Q And so as a result of that, you made arrangements with Yvonne that she would cover the strata fees, right?

A I didn't make those arrangements. Yvonne suggested it to me.

Q Okay. After you raised the issue saying, "Oh, that's too expensive. I've gotta - the strata fees are going to be more expensive." She said, "Oh, well, I'll cover all the strata fees," right?

A Yes.

Q "I don't want you to worry about that?"

A That's right.

Q "I don't want you not to move in," right?

A Yeah, that's right.

Q She wanted you to move in right away, didn't she?

A I assume she wanted me to move in as soon as I could, yeah.

[39] There is little doubt that Mrs. Epp knew that Mrs. McGrane wanted her to live in Jean's townhouse.

D. THE EVENTS LEADING UP TO THE DEED OF GIFT

[40] Mr. Gracie does his best to carry out his commitment to Miss Pearson to look after Mrs. McGrane. He knew from talking to Mrs. McGrane that she felt comfortable with Mrs. Epp and wanted her to be her companion, look after her, and live next door in Jean's townhouse. She wanted Mr. Gracie to explore all of that with Mrs. Epp. Mrs. McGrane has various medical issues, some of which Mr. Gracie described as "female kinds of things she needed". Mr. Gracie felt that if Mrs. Epp was going to be more involved in Mrs. McGrane's life, something had to be formalized and he canvassed that with her.

- [41] Mr. Gracie and Mrs. Epp met for lunch and talked about Mrs. McGrane's proposal. He told her that once probate was granted and she was living in Jean's townhouse and taking care of Yvonne, at the end of Yvonne's life, she would get the townhouse. At that point Mrs. Epp laughed and said that Yvonne had already talked to her about that. She then told Mr. Gracie some of her personal history: nobody had ever given her anything (let alone a townhouse), she had not done well in her divorce, she was being subsidized in her son's apartment, she did not pay taxes and could not afford to pay them.
- [42] Mr. Gracie made it clear to Mrs. Epp that it would be a big commitment on her part, but it would be a business arrangement, and they would work out things so that she could continue to have her own life, and not be put in a more difficult financial situation. He made it clear to her (and she understood) that if she had any concerns, she was to let him know.
- [43] Mrs. Epp was open to the proposal about moving into the townhouse, but left Mr. Gracie with the impression that she was very mistrusting.
- [44] On March 22, 2007 Mrs. Epp drove Mrs. McGrane to see Gayle Raphanel.
- [45] Ms. Raphanel testified that Mrs. McGrane broke down when she spoke about her sister, but lit up when she spoke about Mrs. Epp. As a result, Ms. Raphael had a discussion with Mrs. Epp after she spoke to Mrs. McGrane. It was the first of several times that Mrs. Epp and Ms. Raphanel spoke to one another. Mrs. Epp expressed amazement at Mrs. McGrane's proposal, but was devoted to her, and indicated to Ms. Raphael that she would move into the townhouse.
- [46] Ms. Raphanel, like Mr. Gracie, tried to move things along as quickly as possible so that Mrs. Epp would settle into Jean's townhouse. However, Mrs. Epp began raising concerns. She was concerned about what would happen if there was a disagreement and Mrs. McGrane asked her to leave the townhouse. Mr. Gracie repeatedly tried to reassure her that they would try to resolve her concerns as long as she was committed to moving into the townhouse and getting on with the job of caring for Mrs. McGrane.
- [47] On instructions from Mrs. McGrane, Ms. Raphanel prepared three documents dated April 30, 2007: a representation agreement by which Mrs. McGrane appointed Mr. Gracie, Mr. Waddell, and Mrs. Epp as her representatives, Mrs. McGrane's Will, and a letter dated April 30, 2007 to Mrs. Epp.
- [48] Before the representation agreement was signed, Mrs. Epp told Ms. Raphanel that she was concerned that Mr. Waddell and Mr. Gracie would vote together and she would be disadvantaged. As a result, the representation agreement provides that in the event of an unresolved disagreement about where Mrs. McGrane was to live (such as going to an extended care home), Mrs. Epp's decision was binding on Mr. Waddell and Mr. Gracie.

[49] Mrs. Epp signed the representation agreement at Ms. Raphael's office on May 25, 2007. Again, as she had to Mr. Gracie, Mrs. Epp expressed her mistrust and concerns to Ms. Raphael. She explained that she always had bad experiences when it came to agreements. She talked about her divorce and how she ended up with nothing. However, she told Ms. Raphael at almost the outset of their dealings that she would move into the townhouse after it was cleaned up.

[50] Mrs. Epp admits that Ms. Raphael, Mr. Gracie, and Mrs. McGrane did what they could to reassure her and deal with her concerns about moving into Jean's townhouse:

Q After that meeting of May, Yvonne was pressuring you to move into Jean's apartment, isn't that correct?

A I never thought of it as pressuring, but I knew she was anxious.

Q She was anxious and requesting that you do so?

A Yes.

Q And she asked you if there's anything else that could be undertaken to reassure you, right?

A Right.

Q Reassure you so that you would move in?

A Yes.

[51] Mrs. McGrane's Will provides, under the heading "GIFT OF REAL ESTATE", that she transferred her interest in Jean's townhouse to her friend Shirley Epp for Mrs. Epp's use absolutely.

[52] Mrs. Epp never saw Mrs. McGrane's Will, but knew from Mrs. McGrane and from Ms. Raphael that, by the terms of her Will, Mrs. McGrane was giving her Jean's townhouse. Mrs. Epp testified:

Q Now, the will is at Tab 2 and it, too, is dated April 30th, 2007, and on the second paragraph, at paragraph 6, there is the gift of real estate.

A Yes.

Q And what she's done here is provide for you - that is the number 12 - in her will, right?

A Yes, a gift -

Q You're aware of that?

A - of real estate, yes.

Q Well, you -

A I knew that she would do that. She said she would when she gave me the gift. She said she'd put it in her will.

[53] Mrs. Epp had no difficulty expressing any of her concerns to either Ms. Raphanel or Mr. Gracie. She told Ms. Raphanel that she was concerned about whether she would really end up owning the townhouse. She told Mr. Gracie that she was concerned that Mrs. McGrane could always change her Will. She was concerned with how Mrs. McGrane could give her Jean's townhouse when probate had not occurred.

[54] In an effort to reassure her that Mrs. McGrane was sincere about keeping her end of the bargain, and to get Mrs. Epp to commit to moving into the townhouse as soon as possible, Ms. Raphanel wrote the letter of April 30, 2007:

April 30, 2007

DELIVERED BY HAND

Ms. Shirley Epp

Dear Ms Epp:

Re: 12 - 960 W. 13th Avenue, Vancouver, British Columbia

As you know, I am Yvonne McGrane's lawyer in connection with her application for probate of her late sister's will and in connection with her own estate planning.

When probate of Ms. Pearson's estate is granted, and title to the property is transferred into Ms. McGrane's name, Ms. McGrane has instructed me to transfer the property to herself and you as Joint Tenants so that the right of survivorship will apply at the end of Ms. McGrane's lifetime. In the meantime, Ms. McGrane has instructed me to include in her will a bequest to you of the above property, which is the suite which was occupied by Ms. McGrane's late sister, Jean Pearson. I have prepared that will and Ms. McGrane has signed it today. Even though the property is not yet in Ms. McGrane's name, she has a beneficial title to it and if something happened to Ms. McGrane before probate of Ms. Pearson's estate is granted, the property would still come to you.

Ms. McGrane has asked me to confirm to you that she would like you to have the right to occupy the suite at 12 - 960 West 13th Avenue, Vancouver, B.C., as soon as possible. Ms. McGrane will pay for the property taxes on the property and the strata fees and you would pay for the utilities (hydro, cable and telephone) as well as any insurance you may wish to carry on your personal property.

If you are in agreement with this proposal, please sign the enclosed copy of this letter to confirm the terms of the agreement. Please call me if you have any questions about this.

Yours truly,

"Gayle M. Raphanel"

[55] Mrs. Epp agrees that the letter of April 30, 2007 was written to address her concerns. She testified in cross-examination:

Q And there was an explanation in this letter about the probate of Jean Pearson's estate, right?

A Mm-hmm.

Q And that was in the letter as a response to you being concerned about the fact that Jean Pearson's home was not - was not in Yvonne's name yet; isn't that right?

A That's correct.

Q And you were very concerned?

A Yeah, couldn't understand how she could give me what she didn't really own - her intentions were good.

Q And you expressed those concerns - well, you've said you've met with Gayle Raphanel at the end of May, right?

A Yes, in May - yeah, okay.

Q And before you met with Gayle Raphanel, you explained these concerns to Yvonne?

A Yes.

[56] Mrs. McGrane wanted Mrs. Epp to move into Jean's townhouse as soon as possible; so did Ms. Raphael, Mr. Waddell, and Mr. Gracie. They all made it known to Mrs. Epp that Mrs. McGrane wanted her in the townhouse in order to be there for her. Mrs. Epp testified in cross-examination:

Q Okay. Now - and at that time, when you explained these concerns about the probate process, wasn't it the case that there was pressure being placed upon you to move into the Pearson townhouse?

A I never even felt pressured. I don't know where that comes from. I know everybody wanted - I know what everybody wanted but -

Q What was that? What is it that everybody wanted?

A That the sooner I could move in, the better but I don't feel like anybody pressured me. They voiced their opinions. They let me know in nice ways and - no, I don't remember ever feeling pressured over it.

Q Okay. They were nice to you about it?

A Yeah.

Q But they wanted you in the townhouse, right?

A Yeah.

Q And they wanted you in there to look after - look after Yvonne?

A Yes.

Q The letter goes on to say, the second to last paragraph [as read in]:

Ms. McGrane has asked me to confirm to you that she'd like you to have the right to occupy the suite as soon as possible

A Mm-hmm.

Q So wasn't - wasn't Gayle, on that occasion, talking to you about you moving into that suite as soon as possible?

A Was she talking to me about it? Yes.

Q And wasn't Yvonne talking to you about moving into the suite as soon as possible?

A She voiced that she'd like me to do that, yes, and I kept saying I - "it's not yours to give me. I still need some security here."

[57] Mrs. Epp wanted security and insisted that she be on title to Jean's townhouse before she would move in. She testified in direct examination:

Q So what did you say about your willingness to move into the townhouse?

A Well, I explained to her that I - I didn't know how she could give me something that she didn't actually own yet, and I voiced that opinion to anybody that would listen and that was aware of what was going on at the time between us.

Q All right. And then what did you say about your willingness to move into the townhouse?

A I told her I couldn't - I - I needed more security, I guess the word is. I needed to be more secure about it, which would mean I'd pretty well have to be on title with her. And she - she said she understood.

Q Was it raised between the time you said you had to be on title and when you actually got on title, which we know to be in May '08, just about 11 months later?

A You know, I can't honestly remember, but I do know that there was never any doubt that she wanted me in there and she would sort of, well, "I sure wish you were there, it would be so much more convenient." But I - I don't know that she actually said, "Are you moving in?" Because she was aware of how I felt. I told her many times that I pretty well had to be on title so that I'd know I had a permanent home.

[58] On examination for discovery Mrs. McGrane gave the following answers regarding the proposed arrangement:

Q Did you offer her ownership in the Pearson townhouse if she moved in?

A If certain condition were carried out.

Q What were those?

A Well, I called it tit and tit. In other words, I would help her and she would help me. But it had to be help. I mean, it couldn't be just nothing. In other words, assistance.

Q What did you offer her? You told me what you wanted, but what did you offer her?

A I don't quite understand that question.

Q Did you offer her ownership of the Pearson townhouse?

A I said if she followed - if the conditions that we outlined and there were several people heard them, if the conditions were followed, then she would after - after I died, after I died she would - I would make sure that she owned the townhouse next to me.

Q And what specifically were the conditions that you discussed with her?

A Well, for instance, that, you know, she was able to help me. This was what we suggested, we talked about, that she would help me with what I needed, and I would help her with what she needed.

Q Was there any discussion of what help you needed?

A Well, she didn't really need the discussion. She could see.

Q Was there any discussion between you and her about the conditions that you required her to meet in order to be receiving the interest in the townhouse?

A That she assist me when I need assistance until the day I died.

Q And was that - was there any detail as to what assistance you would be entitled to call on her for?

A I don't believe we discussed exactly the conditions, but that was the idea, that she would give me any assistance that I needed to keep me alive.

[59] On June 27, 2007 Mr. Gracie drove Mrs. McGrane to Ms. Raphanel's office where she signed the deed of gift. The next day, on June 28, Mr. Gracie brought the deed of gift to Mrs. Epp and witnessed her signature on the deed. He told her, "This is what you want. This is your security. You can move in now. You're safe".

[60] The deed of gift reads as follows:

DEED OF GIFT

THIS DEED OF GIFT, dated for reference only June 27, 2007, is made by Yvonne Rose McGrane (the "Donor") in favour of Shirley Epp (the "Donee").

THIS DEED WITNESSES as follows:

1. The Donor wishes, at the end of her lifetime, to make a gift (the "Gift") to the Donee of her real property at #12 - 960 West 13th Avenue, Vancouver, British Columbia, which property is at present owned by the estate of Jean Pearson of which the Donor is the sole beneficiary. In order to effect the gift, the Donor has made a Last Will and Testament bequeathing that beneficial interest to the Donee and, when probate of the Estate of Jean Pearson is obtained, has instructed her solicitor to transfer the said property into joint tenancy with the Donee, reserving a life interest to herself.
2. The Donee accepts the Gift.
3. This Deed shall be effective as of the date on which the last party to it signs it.

TO EVIDENCE THIS GIFT the parties have executed this Deed under seal.

SIGNED, SEALED AND DELIVERED by)

the Donor in the presence of:)

Name: "Gayle M. Raphanel") "Yvonne R. McGrane"

) June 27, 2007

)

)

SIGNED, SEALED AND DELIVERED by)

the Donee in the presence of:)

Name: "Ken Gracie") "Shirley Epp"

) June 28, 2007

)

)

[61] On the deed of gift there are two black dots adjacent to the signature line where Mrs. McGrane and Mrs. Epp signed their names. The black dots are presumably red wafer seals. Neither Mrs. Epp nor Mrs. McGrane noticed the seals and it is not clear when they may have been affixed.

[62] On the same day, June 28, 2007, Mrs. Epp signed her name on the letter of April 30, 2007 from Ms. Raphael indicating that she agreed with the proposal set out in the letter.

[63] Mrs. Epp indicated in cross-examination what she understood from reading the deed of gift:

Q Now, you'd agree with me that when you had the initial discussion, you say that Yvonne told you that you would receive Jean's unit when she, i.e, Yvonne, passed away, right?

A Yes.

Q And you understood then, when reading the deed of gift document, that you were going to - receiving the property, Jean's property, when Yvonne passed away, right?

A Yes.

Q And looking at the deed of gift some more, the original offer of Yvonne McGrane, was that you were to live in Jean Pearson's property and be the - her companion to the point that you - that she passed away, right?

A Correct.

[64] In July 2007 Ms. Bouma, Maria Zallen (another owner in the townhouse complex and the "number two person" on Mrs. McGrane's Lifeline call list) and Mrs. Epp worked for a couple of days, or roughly 12 hours, in Jean's townhouse getting it ready for Mrs. Epp to move in. Ms. Bouma testified that the sole purpose of cleaning it up and removing the clothing from the townhouse was so that Mrs. Epp could move in. She understood from her conversations with Mrs. McGrane and Mrs. Epp at that time that Mrs. Epp would be moving into the townhouse in September.

[65] Around this time there is no doubt that Mrs. Epp was providing companionship to Mrs. McGrane. She generally telephoned Mrs. McGrane around 11:00 a.m. and visited her in the afternoon starting around 3:00 p.m. depending on what was planned for the day, such as a symphony concert scheduled for 2:00 p.m. in the afternoon, or 8:00 p.m. in the evening, in which case she would arrive at Mrs. McGrane's earlier or later in the day.

[66] Almost every time Mrs. Epp was with Mrs. McGrane, she (that is Mrs. McGrane) took her out for dinner at the White Spot or occasionally some other similar restaurant in the neighbourhood. If Graham Epp was present, he would go out for dinner with the two women, and Mrs. McGrane paid for his dinner too.

[67] Both Mrs. Epp and her son testified that they had to take Mrs. McGrane out for dinner because she did not eat properly: Mrs. McGrane, left on her own, would eat only a tomato sandwich. While Mrs. Epp testified that that if she moved into Jean's townhouse, she expected that she would be cooking meals for Mrs. McGrane, she never cooked a meal for Mrs. McGrane when she was alone with her.

E. THE EVENTS AFTER THE DEED OF GIFT

[68] Mrs. Epp never moved into the townhouse in September. In October 2007 just after Thanksgiving, she had what she expected to be day surgery on her left hand. There were complications. Mrs. Epp remained in the hospital for at least a week, and was in a lot of pain for at least two weeks. Her left hand was in a cast until the end of November 2007. During that time she could not drive to see Mrs. McGrane.

- [69] Mr. Gracie and Mr. Waddell ended up doing more than they normally did for Mrs. McGrane because Mrs. Epp was unavailable. They drove Mrs. McGrane to several appointments and did more of her shopping.
- [70] Probate was granted on Miss Pearson's Will on April 18, 2008.
- [71] On May 1, 2008 Mrs. McGrane and Mrs. Epp met with Ms. Raphanel and signed the Land Title Act, R.S.B.C. 1996, c. 250, Form C document for transferring the townhouse into their names as joint tenants, reserving a life estate for Mrs. McGrane.
- [72] Mrs. Epp indicated to Ms. Raphanel that she was very pleased and, further, led Ms. Raphanel to believe that she was going to move into the townhouse shortly afterwards. Ms. Raphanel even used the townhouse address as Mrs. Epp's address on the transfer documents.
- [73] Mrs. Epp alleges in her statement of defence that she did not understand the meaning of "reserving a life interest to herself", was concerned with those words, and did not seek legal advice. However, when asked in direct examination if she recalled anything about signing the Form C document, she testified that she did not really remember signing or reading the document. When asked whether Ms. Raphanel gave her an explanation of "life estate", she said quietly to herself but audibly ("under my breath" as she put it), "I don't know if I had seen the life estate". On cross-examination she testified:

Q You knew that you were - that you were signing it - a life estate document at the time?

A I knew I was signing a - a Form C, whatever a Form C was, I knew I was signing it.

Q Okay. Look -

A Yes.

Q - look at the third item down, it says "life estate." See that?

A Yeah, okay.

Q You didn't read any of this?

A I didn't - I don't - you know what, I didn't - I don't remember seeing it really.

- [74] She later suggested she saw the life estate on the title document when she attended the Land Title Office, and though she wondered what it meant she never asked anyone because she was embarrassed, but "it kept gnawing at me".
- [75] I do not believe Mrs. Epp. She had no difficulty raising any of her concerns with either Mrs. McGrane, Mr. Gracie, or Ms. Raphanel. I have no doubt that if she was concerned about the life interest she would have told any or all of them.
- [76] Mrs. Epp admitted in cross-examination that she said she would move in after probate was granted:

Q And you said, "Well, until probate is granted, I won't move in." Is that what you said?

A Yes.

Q Okay. And you said, "After the property - probate has been granted and the property transferred, until I get my name on - on the property," right, on the title?

A Mm-hmm.

Q Is that right, yes or no?

A Oh, I'm sorry, yes.

Q Okay - that you - you wouldn't be moving in until that point?

A Correct.

Q Okay. But you said you would be moving in after that was done?

A Yes.

[77] Mrs. Epp did not move in after probate was granted.

[78] Ms. Raphanel testified that she saw Mrs. Epp on May 30, 2008 when she went to Mrs. McGrane's apartment to deliver registered copies of the transfer documents. Afterwards, Mrs. Epp walked her back down to the guest parking spot and told her that she had another concern that prevented her from moving into the townhouse. She indicated that she understood joint tenancy and the right of survivorship, but she was worried that if she died before Mrs. McGrane, she would lose her "investment", meaning her time. Ms. Raphanel told Mrs. Epp that she would think of a way to deal with her concern. Ms. Raphanel testified that it was the first time she became concerned whether Mrs. Epp was going to move into the townhouse at all.

[79] Mrs. Epp was still concerned whether she really had an interest in the townhouse. She and Graham went to the Land Title Office at least three times, checking to see if her name was on title. When she did not see her name on title the first couple of times, she telephoned Mr. Gracie quite agitated. She asked him "what was going on", and he testified that he tried his best to convince her that she was indeed on title.

[80] The third time that Mrs. Epp went to the Land Title Office she saw her name on title to the townhouse. Shortly afterwards she telephoned Mr. Gracie and said, "I'm concerned about my son Graham. What if I died first? What about my estate?"

[81] Mr. Gracie testified that he was stunned. He told Mrs. Epp that no one had thought of her dying before Mrs. McGrane, but if she were to die first, the whole point was that the townhouse had to be available for Mrs. McGrane's caregiver, or they would have to find someone who lived close by. He told Mrs. Epp that he would raise her issue with Ms. Raphanel.

- [82] Mr. Gracie testified it was at that point he felt that Mrs. Epp was not going to move into the townhouse.
- [83] On June 4, 2008 Ms. Raphanel received instructions from Mrs. McGrane to prepare a codicil to provide that Graham would inherit the townhouse in the event Mrs. Epp predeceased Mrs. McGrane.
- [84] Ms. Raphanel arranged to meet with Mrs. Epp on July 3, 2008 and told her that she had been instructed by Mrs. McGrane to prepare a codicil to her Will to provide that if she predeceased Mrs. McGrane, the townhouse would go to Graham. At the same meeting, Ms. Raphanel asked Mrs. Epp to give her a firm date when she would be moving into the townhouse. Mrs. Epp replied that she had some personal matters that made it difficult to be precise but she would definitely move in by the end of September.
- [85] Ms. Raphanel's evidence on this point is corroborated by the notes she made during the meeting. On the other hand, when Mrs. Epp was asked on cross-examination whether that is what she told Ms. Raphanel, she said she did not remember and her mind is a complete blank (the answer is typical of many of Mrs. Epp's answers).
- [86] At the same meeting on July 3, 2008 Mrs. Epp asked Ms. Raphanel to assist her in arranging to have new keys made for Jean's townhouse, which was of course a reasonable request. Mrs. Epp agrees that at the meeting she told Ms. Raphanel that Mrs. McGrane was becoming forgetful and frustrated by her forgetfulness. Mrs. McGrane was, to use Mrs. Epp's word, "deteriorating".
- [87] During the summer of 2008 Mrs. Epp raised another concern. She told both Ms. Raphael and Mr. Gracie she was concerned about her son Tim. He had gone to Edmonton, cut off contact with her (incidentally, he maintains contact with Graham) and she was worried he would lose his house in Langley for failing to pay property taxes. When Mr. Gracie raised the question of when she was moving into the townhouse, Mrs. Epp replied that she could only deal with her son and his property. She told the same thing to Ms. Raphael.
- [88] Another reason Mrs. Epp gave for not moving into the townhouse in the summer was that she was "too busy going out for drives and beaches and parks with Yvonne" and helping her with her patio garden (it measures approximately 10 by 15 feet). Another reason Mrs. Epp gave for not moving into the townhouse is that in July 2008 she found moths in the townhouse.
- [89] Mr. Waddell and Mr. Gracie planned to go to Europe in the summer of 2008. Before they booked their trip they wanted to be certain that they had a commitment from Mrs. Epp that by that time she would be moved into the townhouse and taking care of Mrs. McGrane. They had rearranged their lives several times, believing her assertions that she would move in, but the dates would come and go and she still had not moved in. The two men met with Mrs. Epp at a restaurant and Mr. Waddell got very angry with her because she had still not moved in. When they returned from Europe on November 4, 2008, Mrs. Epp still had not moved in.

However, now Mrs. Epp was upset because Mr. Waddell had--according to her--been rude to her.

[90] I find there is no doubt that Mrs. Epp would indicate that she was moving into the townhouse in the next month or soon, but the months would come and go and she always had some new reason, concerns, or excuse for not moving in.

[91] On September 19, 2008 Mrs. McGrane attended Ms. Raphanel's office and signed a new Will that provides under the heading, Gift of Real Estate, that if Mrs. Epp predeceased her, she gifted Jean's townhouse to Mrs. Epp's son Graham.

[92] As a result of her meetings with Mrs. McGrane, Ms. Raphanel prepared a draft agreement to comprehensively reflect what the parties had agreed on, including a monthly payment for Mrs. Epp. Since around the time of her initial discussion with Mr. Gracie, Mrs. Epp knew that Mrs. McGrane was willing to pay her a sum of money each month so that she would not be out of pocket as a result of being her companion and living in Jean's townhouse.

[93] Ms. Raphael had Mrs. Epp come to her office on October 1, 2008. She reviewed with her and provided her with a copy of the draft agreement, which reads as follows:

THIS AGREEMENT

is made as of the __ day of October 2008

BETWEEN:

YVONNE ROSE McGRANE

#11 - 960 West 13th Avenue

Vancouver, BC, V52 1P3 [sic]

("Yvonne")

- A N D -

SHIRLEY EPP

#12 - 960 West 13th Avenue

Vancouver, BC, V52 1P3 [sic]

("Shirley")

W H E R E A S:

A. Yvonne inherited the property at #12 - 960 West 13th Avenue, Vancouver, British Columbia (the "Apartment") from her late sister, Jean Eileen Pearson, who died in January 2007.

B. Shirley is a good friend of Yvonne's.

C. Shirley has agreed to live in the Apartment during Yvonne's lifetime and assist Yvonne with miscellaneous aspects of daily living.

D. In consideration of Shirley agreeing to live in the Apartment during Yvonne's lifetime and assisting Yvonne with miscellaneous aspects of daily living, Yvonne has transferred the title to the Apartment into the names of Yvonne and Shirley as Joint Tenants, subject to a Life Estate in favour of Yvonne.

E. The parties are entering into this Agreement to confirm the terms under which Shirley shall live in the Apartment during Yvonne's lifetime and shall own the Apartment solely at the end of Yvonne's lifetime.

IN CONSIDERATION of the foregoing, the parties agree as follows:

1. GENERAL

1.01 The parties may vary or amend this Agreement only by written agreement executed in the same manner as this Agreement.

1.02 Any provision of this Agreement that is void, voidable, invalid in law or unenforceable is severable and the remainder shall continue in effect.

2. OWNERSHIP OF THE APARTMENT

2.01 The parties acknowledge and confirm that title to the Apartment is held in their names as Joint Tenants subject to a Life Estate in favour of Yvonne. The parties confirm that this mode of ownership has been set up so that at the end of Yvonne's lifetime, the Apartment will be the sole property of Shirley. Yvonne confirms that she intends this as a gift to Shirley in recognition of Shirley's friendship and assistance to Yvonne and Jean.

2.02 In the event that Shirley should predecease Yvonne, Yvonne covenants to keep in force a Will leaving the Apartment to Shirley's son, Graham Gordon Epp, for his own use absolutely.

3. POSSESSION OF THE APARTMENT

3.01 Shirley will have exclusive possession of the Apartment and shall take up residence in the Apartment on or before ____, 2008.

3.02 If Shirley predeceases Yvonne, Yvonne may, in her sole discretion, allow Shirley's son, Graham Gordon Epp, to reside in the Apartment during Yvonne's lifetime, or she may choose to allow someone else to reside there.

4. EXPENSES FOR THE APARTMENT

4.01 During her lifetime, Yvonne will pay the property taxes and strata fees for the Apartment.

4.02 While she resides in the Apartment, Shirley will pay the hydro, telephone, cable and other utility bills for the Apartment, as well as insurance for the contents of the Apartment and other incidental costs relating to the Apartment, including any minor maintenance or decorating costs.

5. SHIRLEY'S ASSISTANCE TO YVONNE

5.01 During the joint lifetimes of Shirley and Yvonne, Shirley will assist Yvonne with miscellaneous aspects of daily living, such as, but not limited to, assisting with groceries, library books, banking, legal and medical appointments, including lab tests,

5.02 During the joint lifetimes of Shirley and Yvonne, Shirley will not be required to spend time with Yvonne every day, but will use her best efforts to at least make contact with her by telephone on a daily basis.

6. SHIRLEY'S EXPENSES

6.01 In acknowledgment of the fact that Shirley will have expenses such as gasoline and car maintenance relating to taking Yvonne to medical appointments and accompanying her to various other activities or events Yvonne will provide Shirley with a monthly expense allowance of \$800 on the fifteenth day of every month commencing on the fifteenth day of the first month after Yvonne moves into the Apartment. This payment will be made by automatic bank transfer from Yvonne's bank account to Shirley's bank account.

6.02 Six months after Shirley has moved into the Apartment, Yvonne will review the amount of the monthly expense allowance with a view to increasing it to \$1,000 per month if expenses have increased over that period. Thereafter, Yvonne will review the amount of the monthly expense allowances annually.

6.03 In addition to the monthly expense allowance, Yvonne will pay for Vancouver Symphony Orchestra tickets for performances which she and Shirley attend, and for other similar activity costs.

7. DIFFERENCES OF OPINION

7.01 If Shirley and Yvonne have differences of opinion about any matters relating to the Apartment or Shirley's assistance to Yvonne, and they are not able to resolve those differences of opinion on their own, they will attend mediation.

8. BINDING AGREEMENT

8.01 This Agreement benefits and binds both Shirley and Yvonne.

IN WITNESS WHEREOF the parties set their hands and seals as of the date of this Agreement.

[94] Clause 3.01 of the draft agreement provides for a date when Mrs. Epp would move into the townhouse. Mrs. Epp had to fill in the date. Ms. Raphanel testified that she told Mrs. Epp that if she had a problem with moving into the townhouse, to tell her: the property could then be conveyed back to Mrs. McGrane and Mrs. Epp would be compensated her for her time. However, Mrs. Epp was adamant that there was no problem, she was going to move in "very soon", and she would telephone Ms. Raphanel in the next day or two with a firm date so that the agreement could be completed.

[95] Ms. Raphanel testified that she told Mrs. Epp to review the proposed agreement, obtain independent legal advice if she wanted, and let her know if she wanted any changes made to the document. When Mrs. Epp never telephoned, Ms. Raphanel had her assistant telephone Mrs. Epp to find out when she was moving in. As a result, Ms. Raphanel understood that Mrs. Epp would be moving in mid-January 2009 and that she did not want any more telephone calls from Ms. Raphanel's office.

[96] Mrs. Epp has either a poor recollection or is deliberately vague. She recalls being handed the draft agreement and reading it, but her evidence about how and when she gave Ms. Raphanel a mid-January date for moving into the townhouse is vague. She does not recall whether a date or what date was discussed when she met with Ms. Raphanel, she cannot remember telephoning or speaking to Ms. Raphanel's secretary, and she cannot remember whether she gave a move-in date for the middle of January or the end of January. However, she gave the following answer in direct examination on why she needed from early October 2008 to mid-January 2009 before she would move in:

Q Okay. Now, it's October 1st when this is presented to you and you're estimating a move-in date more than three months away.

A Mm-hmm.

Q Why did you put it off or tell them you were going to put it off until January?

A Well, you know, in my mind I'm still thinking, oh, gosh, there's still - we still got to get this place cleaned up to a point. Again, I - I knew the moths were there and it's something that I had to deal with, with Yvonne, knowing that she already said - almost denied they were there. And I also - and then I'm thinking ahead and I think, oh, gosh, now, you know, in a couple of months, it'll be Christmas and having company, and I - I just - I just figured, well, everything seems to be going okay. Graham was there helping her out -

Q No, no, Graham wasn't there on October 1st.

A Oh, I'm sorry.

[97] I recognize that Mrs. Epp was likely quite nervous when she was testifying. However, I was left with the impression that she was at best vague in her recollection, and exaggerated the time she spent both with Mrs. Epp and in cleaning the townhouse. Her recollection of events was not particularly good and she would say just about anything to bolster her claim. I did not find Mrs. Epp to be a particularly honest witness. Where her evidence conflicts with that of another witness, I prefer the evidence of the other witness.

[98] Mrs. Epp spent little time with Mrs. McGrane in December because she was busy with her son and his partner who came from Ottawa to visit, and because of the unusually heavy snowfall that winter. Mrs. Epp drove once when it snowed, and never drove again in the snow. She also seemed to take the position that there was little need to visit Mrs. McGrane because Graham was in the townhouse.

F. GRAHAM EPP MOVES INTO JEAN'S TOWNHOUSE

- [99] Mr. Epp is 47 years old. He first met Mrs. McGrane and her sister Jean in 2001. It seems that at that time he worked for The Property Shop where he swept and cleaned the townhouse complex.
- [100] After working for the Liquor Distribution Board for six months, in June 2007 Mr. Epp became unemployed. He had been living in a rented apartment but in September 2007, he moved in with his mother to save money. Because he is close to his mother, he became close to Mrs. McGrane. From time to time he helped Mrs. McGrane with her patio gardening and she paid him for his work.
- [101] Mr. Epp worked at Vancouver Community College from January to August 2008. He generally started work at 5:30 p.m., finished work around 9:00 p.m. and then usually went over to Mrs. McGrane's, visited until about 10:30 or 11:00 p.m., and drove home with his mother. He was unemployed from August to September 2008, until he started work in October 2008 at Costco Wholesale in Burnaby.
- [102] Around the end of September or beginning of October 2008, Mr. Epp began the task of cleaning up his brother Tim's house in order to get it ready to rent out. After a couple of weeks, he moved into the house in Langley. The two-level, four-bedroom house had been vacant for a year. Over a period of eight weeks (starting around the end of September, before he moved into the house) Mr. Epp cleaned and painted the house, repaired the fence, and cleaned up the lawn and garden. He accidentally flooded the basement and had to dry out the carpet. There was no furniture upstairs, but there was furniture downstairs which he hauled to the dump.
- [103] The new tenants moved into Tim's house sometime in December 2008. At that point, instead of returning to his mother's condo, Mr. Epp moved into Jean's townhouse. He testified that his mother did not want him to move into the townhouse, but that he went behind her back and asked Mrs. McGrane if he could move in and she agreed. There is no doubt that Mrs. McGrane and Mr. Epp were close to each other.
- [104] In November 2008 he had stayed a couple of days in Jean's townhouse when his car broke down, and for ten days he drove Mrs. McGrane's vehicle.
- [105] Mr. Epp testified that he moved into Jean's townhouse around December 10 or 11, 2008.
- [106] Ms. Bouma testified that around the second week of December 2008 she spoke to Mr. Epp and tried to find out how long he would be staying in the townhouse. He told her that he was staying there because his brother was at the apartment that he shares with his mother. When he asked her; "You do know it belongs to mom don't you?" she decided not to pursue it any further.

- [107] Mrs. Epp indicated that if she moved out of her condo, her son Michael would sell it and that was why she needed the security of being on title to Jean's townhouse. However, Mr. Epp testified that his brother Michael was not selling the condo when their mother moved out and into Jean's townhouse. Instead, the plan was that he would move into the condo and pay his brother \$650 per month rent (the market rent was \$850) when their mother moved into Jean's townhouse.
- [108] Mr. Epp testified that he would have returned to live at his mother's condo after he left Tim's house in Langley, but his mother was not ready to move into Jean's townhouse. The plan was that he would move out of the townhouse when his mother was ready to move in.
- [109] January 2009 came and went; Mrs. Epp never moved into the townhouse and Mr. Epp never moved out of the townhouse. That, of course, upset Mrs. McGrane. Mr. Epp remained in the townhouse for the month of February, and it seems, March 2009.
- [110] On February 5, 2009 Mrs. Epp telephoned Mrs. McGrane who testified that the conversation was a complete shock to her. Mrs. McGrane said that Mrs. Epp was very disagreeable, annoyed, and swore at her for looking at someone the wrong way. Mrs. McGrane said she was dumbfounded because she had no knowledge of what Mrs. Epp was talking about. Mrs. Epp then "hung up after she expelled all her nastiness", and Mrs. McGrane immediately telephoned Ms. Raphanel.
- [111] Mrs. Epp concedes that her tone of voice with Mrs. McGrane was different but she "wanted to get to the bottom of this", and insisted and demanded that Mrs. McGrane tell her whether she was going to sign the October 2008 draft agreement before she moved in--but Mrs. McGrane "just kept not giving me an answer". The more Mrs. McGrane refused to answer, the more determined she was to find out whether "the draft had been signed". Mrs. Epp said she told Mrs. McGrane that she was "really good" to her son at Christmas, but when they (her son and his partner) visited her the next day "you just shot terrible dirty looks at them and made them feel really uncomfortable". Mrs. Epp said she then told Mrs. McGrane she did not appreciate the filthy look she gave her son, and in response, Mrs. McGrane hung up on her.
- [112] Mrs. Epp testified that repeatedly prior to the February 5 telephone conversation and during the telephone conversation she demanded to know from Mrs. McGrane if she had signed the draft agreement because she would not move into the townhouse until she knew the agreement was signed and she was certain that she would be paid \$800 per month.
- [113] Mrs. Epp alleges in her statement of defence that on more than one occasion between October 2008 and January 2009, she raised with Mrs. McGrane "the status of the October 1, 2008 draft agreement" but Mrs. McGrane "was becoming extremely irascible and made various excuses as to why she had not signed the draft agreement".
- [114] In cross-examination, Mrs. Epp was asked about talking to Ms. Raphanel about the problem of getting the locks to Jean's townhouse changed. She answered:

A I know I did but I mentioned it to Yvonne first. It's like there's three relationships going on. I would phone Ken in a minute if it was anything that - anything that was more than trivial, meaning like why would I bother him with a lock when I can talk to Yvonne and then Gayle got into it, and it was settled. I don't need to call Ken every time something went wrong with Yvonne. My God, I've been on hold continually with them. See, they dealt with her in one aspect and I dealt with her in another, and if there were any problems from me, I knew who to go to but there wasn't anything really big that came up that I felt that I'd just phone him over, at this point.

[115] There was no evidence that Mrs. Epp ever told Ms. Raphael or Mr. Gracie that she would not move in until the October draft agreement was signed.

[116] Mrs. McGrane was asked in direct examination and cross-examination several times and in different ways whether Mrs. Epp asked her whether she had signed the October draft agreement. Mrs. McGrane replied each time that she did not recall or remember being asked that question. The distinct impression I formed from Mrs. McGrane's answers and demeanour is that that she was mystified by the question. I find that Mrs. Epp never asked Mrs. McGrane if she had signed the draft agreement: it is simply another excuse that Mrs. McGrane has made up for not moving into the townhouse.

[117] There is no doubt that Mrs. Epp agrees that the October draft agreement sets out what was agreed to between the parties. A fundamental term of the agreement between the parties was that Mrs. Epp would move into townhouse and provide assistance to Mrs. McGrane.

[118] On February 9, 2009 Ms. Raphanel wrote to Mrs. Epp. The letter stated, in part, as follows:

I am sorry to hear that your relationship with Yvonne has broken down over your inability to move into Jean's apartment as planned. It has been more than two years now since Jean died, and Yvonne has reluctantly accepted that you are not going to move in. We all regret that Yvonne will not have your companionship and that you were unable to avail yourself of this opportunity to inherit Jean's apartment. I enclose a Form A Transfer, in duplicate, and ask that you sign this in front of a Notary Public and return it to me, at your earliest opportunity. At the same time please also return the two garage door openers in your possession.

In the circumstances, Yvonne wants to compensate you for the time you have spent assisting her over those last two years. I am instructed that as soon as I receive the signed Form A Transfer, I am to provide you with a cheque in the amount of \$15,000 which is over and above the numerous miscellaneous payments Yvonne has made to you and your son.

The letter asked Mrs. Epp to return the two garage door openers, remove the personal belongings she had in Jean's townhouse, and asked that Graham Epp move out within a month.

[119] On February 18, 2009 Mrs. Epp wanted to resolve or mediate the dispute, but by then it was too late. This action was commenced on February 11, 2009.

G. ANALYSIS

- [120] Mrs. Epp argues that the deed of gift was made under seal and that extrinsic evidence is not admissible to vary its terms, which she says must be given legal effect as if it were a binding contract and not merely an inter vivos gift: *Romaine Estate v. Romaine*, 2001 BCCA 509.
- [121] Mrs. McGrane contends that the factual matrix establishes that the parties did not intend that the deed of gift constituted the whole of the agreement between them. Indeed, a determination of the whole agreement between the parties is the crux of this case.
- [122] In *Romaine Estate*, the defendant's uncle transferred property to him and his wife under seal. The uncle intended to leave the property to his nephew in his Will, but wanted to avoid tax consequences that might arise from the transfer. Following the transfer, the once close relationship between the uncle and his nephew soured, and the uncle brought an action denying that he had intended to gift the property to his nephew. The Court emphasized that the wording of the gift documents was "straightforward and unambiguous", and more specifically, "[t]hey contain[ed] no conditions, terms or delayed effect" (para. 51).
- [123] In the case at bar, the deed of gift expresses Mrs. McGrane's wish to transfer Jean's townhouse to Mrs. Epp in her Will and instruction to her solicitor to transfer the property into joint tenancy. Unlike the gift documents in *Romaine Estate*, although the deed "takes effect" when it is signed, the gift does not take effect until Mrs. McGrane's death. In *Romaine Estate*, Levine J.A. commented the use to which extrinsic evidence could be put in construing the terms of a deed of gift such as this (at para. 48):

In construing the Gift Documents as a contract, evidence of the factual context or circumstances in which they were entered into is admissible only to determine whether the words used in them reflect the intention of the parties.

- [124] It is impossible to ignore the fact that the deed of gift does not reflect key aspects of the entire agreement between the parties. The evidence establishes that the deed of gift only came into existence to ensure Mrs. Epp's compliance with the rest of the terms of the agreement between the parties: it is myopic to adhere to a principle that says that because the deed was executed under seal no other evidence is admissible. It is necessary to consider evidence outside of the deed of gift itself in order to understand the parties' intentions.
- [125] Another way to consider whether evidence other than the deed of gift itself should be admissible to interpret or vary its terms is to consider the exceptions to the parol evidence rule: *Gallen v. Butterley* (1984), 53 B.C.L.R. 38, 9 D.L.R. (4th) 496 (C.A.). In that case, Lambert J.A. described the parol evidence rule as follows, at 49-50:

The parol evidence rule is not only a rule about the admissibility of evidence. It reaches into questions of substantive law. But it is a rule of evidence, as well as a body of principles of substantive law, and if the evidence of the oral representation in this case was improperly admitted, the appeal should be allowed.

The rule of evidence may be stated in this way: Subject to certain exceptions, when the parties to an agreement have apparently set down all its terms in a document, extrinsic evidence is not admissible to add to, subtract from, vary or contradict those terms.

So the rule does not extend to cases where the document may not embody all the terms of the agreement. And even in cases where the document seems to embody all the terms of the agreement, there is a myriad of exceptions to the rule. I will set out some of them. Evidence of an oral statement is relevant and may be admitted, even where its effect may be to add to, subtract from, vary or contradict the document:

- (a) to show that the contract was invalid because of fraud, misrepresentation, mistake, incapacity, lack of consideration, or lack of contracting intention;
- (b) to dispel ambiguities, to establish a term implied by custom, or to demonstrate the factual matrix of the agreement;
- (c) in support of a claim for rectification;
- (d) to establish a condition precedent to the agreement;
- (e) to establish a collateral agreement;
- (f) in support of an allegation that the document itself was not intended by the parties to constitute the whole agreement;
- (g) in support of a claim for an equitable remedy, such as specific performance or rescission, on any ground that supports such a claim in equity, including misrepresentation of any kind, innocent, negligent or fraudulent;
- (h) in support of a claim in tort that the oral statement was in breach of a duty of care.

I do not consider that I am setting out an exhaustive list. I am only showing that appropriate allegations in the pleadings will require that the evidence be admitted.

So if it is said that an oral representation, that was made before the contract document was signed, contains a warranty giving rise to a claim for damages, evidence can be given of the representation, even if the representation adds to, subtracts from, varies or contradicts the document, if the pleadings are appropriate, and if the party on whose behalf the evidence is tendered asserts that from the factual matrix it can be shown that the document does not contain the whole agreement. The oral representation may be part of a single agreement, other parts of which appear in the document (the one contract theory). Alternatively, the document may record a complete agreement, but there may be a separate collateral agreement, with different terms, one of which is the oral representation (the two contract theory).

[Emphasis added.]

[126] Thus, where the document in issue does not embody all the terms of the agreement, extrinsic evidence may be admissible to add to, subtract from, vary or contradict the document. Further, if there is a basis laid down in the pleadings, evidence of oral statements may be admissible on the basis of any of a number of exceptions, for example, to demonstrate the factual matrix of the agreement.

[127] The statement of claim alleges in part:

7. The passing of Jean Pearson affected the Plaintiff significantly and the Defendant recognizing this developed a plan wherein the Defendant offered to take up the role previously filled by Jean Pearson, and to provide ongoing assistance and companionship to the Plaintiff in her declining years, by moving into the Pearson Townhouse. In consideration of this assistance and companionship to be performed, the parties agreed that the Plaintiff would leave the Pearson Townhouse to the Defendant when the Plaintiff passed away (the "Agreement").
8. A fundamental term of the Agreement was that the Defendant was to reside in the Pearson Townhouse next door to the Plaintiff which was necessary to facilitate the Defendant's work in providing companionship and assistance to the Plaintiff. It was a further term of the Agreement that the Plaintiff would pay the property taxes and strata maintenance fees for the Pearson Townhouse while the Defendant resided there and the Defendant would only be obligated to pay for utilities and insurance on her personal possessions.
9. A number of months passed and the Defendant indicated to the Plaintiff that she was reluctant to move into the Pearson Townhouse without having greater security that she would ultimately receive the benefit of the Pearson Townhouse after the Plaintiff's death. The Defendant expressed concern that the Plaintiff would not keep her end of the bargain, that the Defendant would provide the work and companionship and then after the Plaintiff passed away, the Defendant would end up not receiving the Pearson Townhouse. The Defendant told the Plaintiff that she had had bad experiences in previous financial arrangements, particularly in connection with the dissolution of her marriage, and that as a result the Defendant had to ensure that she was not going to end up being taken advantage of again (the "Defendant's Fears").
10. To assuage the Defendant and to deal with the Defendant's Fears, the Plaintiff made arrangements for the transfer of the title of the Pearson Townhouse to the Plaintiff and the Defendant as Joint Tenants, which transfer could only occur after probate of the Pearson estate had been granted. To provide further assurances, the Plaintiff instructed her lawyer, Gayle Raphanel, to prepare a Will which would ensure that the Defendant would inherit the Pearson Townhouse even if the Plaintiff failed to survive long enough to allow title to be transferred to herself and the Defendant as Joint Tenants. The Defendant represented to the Plaintiff that when this testamentary provision was made, the Defendant would move into the Pearson Townhouse.

11. The Defendant did not move into the Pearson Townhouse, but rather in April, 2007, the Defendant expressed a concern to the Plaintiff that the Plaintiff could simply change the terms of her will and delete the provisions granting the Defendant the benefit of the Pearson Townhouse.
12. To assure the Defendant of her intention to abide by the Agreement, the Plaintiff instructed her lawyer to write a letter to the Defendant confirming her intention to leave the Pearson Townhouse to the Defendant, and providing the Defendant the right to immediately occupy the Pearson Townhouse. The Defendant at that time confirmed her intention to move into the Pearson Townhouse in the very near future.
13. However, in May 2007, the Defendant again expressed fears to the Plaintiff that the Plaintiff would not abide by the Agreement and consequently the Defendant required greater security, and the Defendant requested to meet with the lawyer Gayle Raphanel who was acting for the Plaintiff in her role as Executrix for the Estate of Jean Pearson, Deceased.
14. The Plaintiff called upon Ms. Raphanel to explain to the Defendant why the Pearson Townhouse transfer could not yet be undertaken and to confirm to the Defendant that arrangements had been made to protect the interests of the Defendant. Again, the Plaintiff requested that the Defendant move into the Pearson Townhouse as soon as possible. The Defendant again indicated that she would be moving in shortly, but that she needed to attend to some personal matters first.
15. In approximately the middle of 2007, the Plaintiff expressed concern that the Defendant had still not moved into the Pearson Townhouse and asked Ms. Raphanel whether there were any other steps to be undertaken to help with respect to the Defendant's Fears and reassure the Defendant that the Plaintiff was going to abide by the Agreement. In order to address the Defendant's Fears so that she would move into the Pearson Townhouse, the Plaintiff instructed Ms. Raphanel to prepare a Deed of Gift to further assure the Defendant of the Plaintiff's commitment to gift the Pearson Townhouse to the Defendant at the end of the Plaintiff's lifetime in consideration of the Defendant moving into the Pearson Townhouse and caring for the Plaintiff for the rest of her life. The Defendant and the Plaintiff attended at Ms. Raphanel's office and signed the Deed of Gift on June 28th, 2007. The Defendant again confirmed at the time of the signing of the Deed of Gift, her intention to move into the Pearson Townhouse shortly but did not provide a date for the move.
16. Subsequently, the Defendant informed the Plaintiff that she would move into the Pearson Townhouse only when title was actually transferred to the Defendant and the Plaintiff as joint tenants. The Plaintiff continued to believe that the Defendant intended to fulfill her terms of the Agreement and that these demands and delays arose directly as a result of the Defendant's Fears.

17. Probate of the Pearson Estate was granted in April, 2008, and the Pearson Townhouse transfer to joint tenancy was registered on May 20th, 2008, and was registered concurrently with a life estate being granted to the Plaintiff.
 18. In May, 2008, the Defendant raised with the Plaintiff a new concern of what would happen to the Pearson Townhouse if she should predecease the Plaintiff.
 19. In June of 2008, the Plaintiff agreed that she would change her will to include a provision directing that in the event that the Defendant predeceased her, the Pearson Townhouse would go to the Defendant's son, Graham Epp. On the basis of this agreement, the Defendant represented to Ms. Raphanel on July 3, 2008, that she would be moving into the Pearson Townhouse soon and no later than the end of September, 2008. On September 19th, 2008, the Plaintiff executed a revised will including the provision that if the Defendant predeceased the Plaintiff, the Defendant's son Graham, would inherit the Pearson Townhouse, however, the Defendant had still taken no steps to move into the Pearson Townhouse.
 20. In an effort to overcome the Defendant's repeated postponement of moving into the Pearson Townhouse, the Plaintiff instructed Ms. Raphanel to propose to the Defendant that the Plaintiff would not only pay the property taxes and strata maintenance fees for the Pearson Townhouse but would also provide the Defendant with a monthly expense allowance. Ms. Raphanel drafted a written agreement and met with the Defendant on or about October 1, 2008, to discuss the terms of the written agreement. The Defendant represented to Ms. Raphanel that she accepted the terms of the written agreement and would provide a firm date on which she would move into the Pearson Townhouse within a few days.
 21. Shortly thereafter, the Defendant advised Lili Charbonneau, Ms. Raphanel's paralegal, that she would move into the Pearson Townhouse by the middle of January, 2009.
 22. In December, 2008, the Defendant made arrangements with the Plaintiff to allow her son, Graham, to live in the Pearson Townhouse from December to the end of January at which point the Defendant represented that she would move into the Pearson Townhouse herself
 23. By February 5th, 2009, the Defendant had still not moved into the Pearson Townhouse and the Plaintiff requested of the Defendant that her interest in the title to the Pearson Townhouse be re-conveyed back to the Plaintiff. The Plaintiff instructed Ms. Raphanel to sever the joint tenancy and commence this litigation to guard against the possibility that the Defendant would not re-convey her interest in the title to the Pearson Townhouse. The Plaintiff proposed to pay the Defendant for time spent for the previous two years for the Defendant accompanying the Plaintiff on various outings.
- [128] There is evidence to support all of the allegations, except for a fairly minor point: Mr. Epp testified that he arranged with Mrs. McGrane to move into the townhouse. However, nothing turns on this.

[129] The statement of defence and counterclaim alleges that the letter of April 30, 2007, when accepted by Mrs. Epp, became an agreement, and that Mrs. McGrane's severance of the joint tenancy was a breach of the April 30, 2007 agreement and the deed of gift. The statement of defence alleges in part:

6. The Plaintiff requested the Defendant to move into the Pearson Townhouse. The Defendant was then residing in an apartment owned by her son, Michael, free of charge. That apartment would be sold if the Defendant moved out. The Defendant would then have no other free accommodation available to her. The Defendant's limited income would not enable her to afford alternative accommodation. The Defendant so advised the Plaintiff.

7 In response, the Plaintiff promised to transfer the Pearson Townhouse to the Defendant.

8. Because probate had not been granted on the estate of Jean Pearson, the Plaintiff did not yet have title to the Pearson Townhouse. In consideration of the Defendant agreeing to continue to provide companionship and assistance to the Plaintiff, the Plaintiff agreed, in a letter from the Plaintiff's solicitors to the Defendant, dated April 30, 2007, to the following:

- a) The Plaintiff agreed to transfer beneficial title of the Pearson Townhouse to the Defendant in joint tenancy with the Plaintiff, effective immediately.
 - b) The Plaintiff agreed never to sever the joint tenancy, thereby assuring that the Plaintiff would receive the Pearson Townhouse on the Plaintiff's death, pursuant to the right of survivorship.
 - c) The Plaintiff committed to effect a transfer of title to the Pearson Townhouse, into joint tenancy, at the Land Titles Office, as soon as probate of the Jean Pearson estate was granted.
 - d) The Plaintiff committed to change her will to bequest the Pearson Townhouse to the Defendant, so as to ensure the Defendant would receive it even if the Plaintiff died prior to the title being transferred at the Land Title Office.
 - e) The Plaintiff committed to pay the property taxes and strata fees in respect to the Pearson Townhouse for the duration of her life.
 - f) The Defendant was to have the right to exclusive possession of the Pearson Townhouse.
9. The Defendant accepted the terms of the April 30, 2007 letter, which became a binding contract (the "April 30, 2007 Agreement").

10. The Defendant performed the April 30, 2007 Agreement by continuing to provide ongoing care and assistance to the Plaintiff continuously until the Plaintiff prevented the Defendant from doing so, on February 9, 2009.

11. In response to paragraph 8 of the Statement of Claim, the Defendant says that her proposed residence in the Pearson Townhouse was intended to facilitate the Defendant's provision of care and assistance to the Plaintiff, but that was not a "fundamental term of the agreement". It was the Defendant's ongoing companionship and assistance which was the fundamental

term. At all material times, it was the Defendant's intention to move into the Pearson Townhouse at the appropriate time and she was on the verge of doing so when the Plaintiff unilaterally terminated the relationship on February 9, 2009.

- [130] This is not a case where the parties executed a straightforward deed of gift and the gifting party later regretted doing so after the relationship soured. Rather, the deed of gift in the case at bar is part of a larger agreement between the parties. It is impossible to consider the deed of gift in isolation from the other documents and oral agreements between the parties.
- [131] Similarly, the letter of April 30, 2007 did not constitute the entire agreement between the parties, but was written in an effort to assure Mrs. Epp that Mrs. McGrane was sincere about her proposal to give her the townhouse. It is clear from the letter of April 30, 2007 that Mrs. McGrane wanted Mrs. Epp to move into the townhouse; moreover, Mrs. Epp understood from the outset that Mrs. McGrane's proposal was for her to move into the townhouse. She testified that there was "never any doubt" that Mrs. McGrane wanted her there.
- [132] All of the subsequent discussions, proposals, incentives, and documents were attempts to deal with Mrs. Epp's evolving concerns and get her to move into the townhouse. The deed of gift and Mrs. Epp's interest in the townhouse only came into existence because Mrs. Epp made it clear that she was not prepared to move into the townhouse unless she was on title. This is supported not only by her evidence, but also by para. 18 of her statement of defence, which alleges:
18. After June 27, 2007, the Defendant was concerned not only with the words in the Deed of Gift, "reserving a life interest to herself", but also that she had no registered interest in the title to the Pearson Townhouse. The Defendant was unsophisticated and did not appreciate the binding legal nature of the agreement reflected in the letter of April 30, 2007 Agreement and in the Deed of Gift. The Defendant was concerned not only with the reservation of the life estate but also explained to the Plaintiff that she was not prepared to move into the Pearson Townhouse until she had a registered interest on title. The Plaintiff accepted that. The Defendant continued to provide virtually full time care and attention to the Plaintiff.
- [133] I have already indicated that I find Mrs. Epp had no concerns with the phrase "reserving a life interest to herself". Mrs. Epp is not unsophisticated or afraid to ask questions or raise concerns.
- [134] Mrs. Epp agreed that she would move into the townhouse in January 2009. Mrs. McGrane concedes that all of Mrs. Epp's earlier broken commitments to move in were forgiven, but not the last one.
- [135] In December 2008 Mrs. Epp seldom came over to assist Mrs. McGrane. Not surprisingly, she felt like she was being replaced. By January 2009, Mr. Gracie, Mr. Waddell, and Ms. Raphanel had almost given up any hope that she was going to move in--but Mrs. McGrane still needed assistance.

- [136] There is no evidence that Mrs. Epp took any real step to move into the townhouse in January or in early February 2009, which, like the other months, came and went.
- [137] Mrs. Epp complains that Mrs. McGrane ought to have given her reasonable notice that she was going to terminate the agreement. However, I find that Mrs. McGrane had given Mrs. Epp more than a reasonable period of time to move in. If the agreement between the parties came to an end, it was Mrs. Epp's own doing.
- [138] Mrs. Epp argues that by the deed of gift Mrs. McGrane gave her an outright immediate gift of the townhouse.
- [139] The use of the word "gift" in the deed of gift reflects the use of the word "gift" in Mrs. McGrane's Will. The deed of gift did not create an immediate or outright gift. An inter vivos gift does not state that the donor wishes "at the end of her lifetime, to make a gift".
- [140] I conclude that Mrs. McGrane succeeds in her claim and she is not required to give her interest in the townhouse to Mrs. Epp.

H. THE CLAIM FOR QUANTUM MERUIT

- [141] Mrs. McGrane complains that "after about the sixth or eighth month", Mrs. Epp's visits "started to dwindle": she always seemed to have something else to do. Mrs. McGrane also complains that when Mrs. Epp came, she visited, but "never came and took care of me which was the crux of the thing".
- [142] Mrs. Epp replies that from June 2006 to December 30, 2008 she spent a total of 5,744 companionship hours with Mrs. McGrane, and claims \$10 per hour for a total of \$57,440. Mrs. Epp summarized the hours as follows:

Companionship Hours with and for Yvonne McGrane

June/06-December/06 6 days a week x 8 hours = 48 hours a week

48 hours x 26 weeks = 1248 hours

January 1-10/07 - 10 days x 7 hours 70 hrs

January 11-31/07 10 days -Funeral, etc. = 70 hrs

Feb 1-Sept/07 6 days week x 8 hours = 48 hours

48 hours x 35 weeks = 1680 hours

Oct.-Dec. 07 5 days week x 7 hours = 35 hours

35 hours x 12 weeks = 420 hours

January - May /08 6 days week x 8 hours = 48 hours

48 hours x 22 weeks = 1056 hours

Summer Sunday's more

May 23/08 (on title) - December /08

5 days a week x 8 hours = 40 hours a week

40 hours x 30 weeks = 1200 hours

(goes to December 30)

May 23-December

June - December 7 months x 4 = 28 weeks

January 2009

Total Hours 5744 hours x \$10 = \$57,440

[143] Mrs. Epp testified that it took her several days to compile the list of the hours she spent with Mrs. McGrane. However, like much of her other evidence, I find that she has exaggerated the number of hours. She agreed that at around the time of Miss Pearson's funeral she was not with Mrs. McGrane very much. Mrs. McGrane had a close friend who came from Edmonton to be with her full-time (but for less than two weeks) but during that time, she stayed in Jean's townhouse.

[144] Mrs. Epp had wrist surgery around the first week in October 2007 and did not visit Mrs. McGrane for the rest of that month, although Graham drove her over once for a short visit. Yet Mrs. Epp claims that she was with Mrs. McGrane five days a week, seven hours a day in October 2007.

[145] Mrs. Epp spent little time with Mrs. McGrane in December 2008 because of her guests and the snow, yet she claims she was with Mrs. McGrane for eight hours per day, five days per week that month.

[146] All of the time Mrs. Epp spent with Mrs. McGrane was in the nature of companionship such as going to the symphony, having tea, and going out for dinner. She did not do Mrs. McGrane's grocery shopping (that was done by Mr. Waddell), or cook her meals. Nothing turns on this. What is clear from the evidence of Mrs. McGrane, and corroborated by Ms. Bouma, Mr. Waddell and Mr. Gracie, is that as time went by, Mrs. Epp spent less time with Mrs. McGrane. It was most certainly not a full-time job for her. Ms. Bouma and Mr. Waddell telephoned Mrs. McGrane regularly and she would always indicate if Mrs. Epp was present with her. Mr. Waddell and Ms. Bouma both dropped by to see Mrs. McGrane at least once or twice a week and they could see if Mrs. Epp was present.

[147] However, Mrs. McGrane wants to compensate Mrs. Epp for the time that she spent with her. Doing the best I can, I find that an award of \$42,000 is appropriate.

I. CONCLUSION

[148] I conclude that Mrs. Epp holds her interest in the real property at #12 - 960 West 13th Avenue in trust for Mrs. McGrane. I direct that Mrs. Epp will sign the necessary documents so that the property will vest in its entirety in Mrs. McGrane.

[149] Mrs. Epp will have judgment against Mrs. McGrane for the sum of \$42,000.

[150] Mrs. McGrane wants to speak to the issue of costs. The parties may make submissions in costs orally or in writing, on the issue of costs or further directions for implementing the terms of this order.

"Loo J."

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Prepared on 29 October 2026 · Esheria