

CANADA / JUDGMENT

Ng v. Ng

2011 BCSC 192

COURT

Supreme Court of British Columbia

DECIDED

17 February 2011

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2011 BCSC 192 Ng v. Ng

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Ng v. Ng,

2011 BCSC 192

Date: 20110217

Docket: S064827

Registry: Vancouver

Between:

Philip Kwok Piu Ng and Stephanie Oi Che Ng

Plaintiffs

And

Andrew Kwok Tai Ng, Angela Kay Chee Ng and Young Chi Woo

Defendants

And

Olympia Jue also known as Olympia Woon Chi Ng

Defendant by Counterclaim

And

Pui Kui To in her capacity as Administratrix of the Estate of Po Sum Ng, Pui Kui To, Tony Kwok Tung Ng, Eleanor Yiu Chi Ng and Jeremy Kwok Ching Ng

Third Parties

Before: The Honourable Mr. Justice Cullen

Reasons for Judgment

Counsel for the Plaintiffs, Defendant by Counterclaim and Third Party, Tony Kwok Tung Ng:

G. Rafter

R. Breder

Counsel for the Defendants:

D.R. Bennett

V. Aldridge

Place and Date of Trial:

Vancouver, B.C.

April 19, 21 - 23, 26 - 30;

May 3 - 7, 10, 2010

February 3, 2011

Place and Date of Judgment:

Vancouver, B.C.

February 17, 2011

INTRODUCTION

- [1] This action is part of a much larger dispute which has arisen between two factions of a large family. The family originally numbered ten: the father, Po Sum Ng ("Mr. Ng"); the mother, Pui Kui To ("Mrs. To"); and eight adult children. These children (in descending order of their ages) are: Philip Kwok Pui Ng ("Philip"); Eleanor Yui Chi Ng ("Eleanor"); Angela Kay Chee Ng ("Angela"); Olympia Woon Chi Ng ("Olympia"); Tony Kwok Tung Ng ("Tony"); Jeremy Kwok Ching Ng ("Jeremy"); Stephanie Oi Che Ng ("Stephanie"); and, Andrew Kwok Tai Ng ("Andrew").
- [2] The defendant, Angela, is and at all material times was married to the defendant Young Chi Woo ("Dr. Woo"). I will throughout these reasons refer to the "children" of the family by their first names for clarity and to avoid confusion. In doing so, I intend no disrespect for any party.

- [3] The father, Mr. Ng, died in 2002. He was by all accounts a dominant force in the family. In the wake of his death, a significant contest developed over the content and disposition of his estate. Arrayed on one side of the dispute are Mrs. To, Eleanor, Angela, Jeremy and Andrew. On the other side are Philip, Olympia, Tony and Stephanie. The present action, although perhaps fuelled by the antagonism which has developed over the contested estate, for the most part, does not involve the estate.
- [4] The plaintiffs, Philip and Stephanie, live and work in Hong Kong. Neither are married. The defendants, Angela and her husband, Dr. Woo, live in Vancouver as does Olympia. The rest of the family live in Hong Kong.
- [5] The plaintiffs' claim is based on an assertion that each of them sent various sums of money from Hong Kong to Angela in Vancouver to enable Angela, using their powers of attorney and money, to purchase, finance, maintain and manage various rental properties and one recreational property for them. There are seven properties at issue, two of which have been sold. An eighth property is claimed by the plaintiffs, albeit on a somewhat different footing, as a gift purchased for them by their father, Mr. Ng. They allege that Angela has wrongfully executed a mortgage against that property and an assignment of rents in favour of Dr. Woo and Andrew. The plaintiffs similarly claim that Angela misused the powers of attorney given to her and her position of trust to mortgage or sell the other seven properties. All the properties were acquired between 1988 and 1995.
- [6] The plaintiffs claim that by her actions, Angela has acted in breach of trust and has unjustly enriched herself, Dr. Woo and Andrew as a result of which they are entitled to damages for breach of trust, unjust enrichment and conversion as well as to various ancillary orders.
- [7] The defendants, on the other hand, resist the plaintiffs' claim by asserting that neither plaintiff provided any funds to Angela to purchase, finance, maintain or manage any of the properties. The defendants maintain that all the funds for the purchase of the seven properties at issue came from Angela and Dr. Woo (and in the case of the recreational property also from Eleanor and her husband, Stan Cheung ("Stan")). The defendants further submit that the plaintiffs were registered as owners of the respective rental properties to enable Angela and Dr. Woo to defer income and tax liability during Dr. Woo's peak earning years and to enable the plaintiffs to share in the long-term fruits of the real estate market in Vancouver by in effect, agreeing to lend their names to the purchases, rentals and eventual sales of the various rental properties. The defendants assert that as a result of the agreement, they allege there would be in due course an accounting to Dr. Woo and Angela for their investment, interest on their investment and a reasonable profit.
- [8] The defendants counter-claim against the plaintiffs and the defendant by counter-claim, Olympia, for unjust enrichment. They seek a declaration of a constructive trust in the respective properties as well as various ancillary orders to account for their claimed interests and investments in the properties.

- [9] Many of the critical events forming the substance of the dispute between the parties are shrouded by the passage of time resulting in the loss of records, and the erosion of memories. What does clearly emerge from the evidence of the witnesses and of the documents produced, however, is that the plaintiffs' version of how they became registered as owners of various of the properties and/or various shares in the properties is completely at odds with the version of the defendants.
- [10] The plaintiffs' case consists of the evidence of Philip, Stephanie and Olympia. The defendants' case consists of the evidence of Angela, Jeremy, Andrew, Eleanor, Dr. Woo and Mrs. To, who testified by deposition.
- [11] The core of the dispute is between Philip and Stephanie on the one hand, and Angela, on the other. The evidence of the other various witnesses provides some context for assessing the conflict in evidence between the principal witnesses, but it does not run to the heart of the case.

THE PROPERTIES AT ISSUE

1275 West 27th Avenue, Vancouver

- [12] 1275 West 27th Avenue (the "West 27th Avenue Property") was purchased on May 31, 1988 for a purchase price of \$340,000. There was a deposit of \$10,000 and completion costs of \$187,881. In addition there were bank charges of \$3 and an appraisal fee for the mortgage lender of \$150. The payments were made through Angela's bank accounts. A loan of \$150,000 secured by a mortgage in favour of Canada Trust was advanced to complete the purchase. The mortgagors and registered owners were Philip and Stephanie who each owned a 50% interest in the property.

2331 West 23rd Avenue, Vancouver

- [13] 2331 West 23rd Avenue (the "West 23rd Avenue Property") was purchased on May 3, 1989 for a price of \$360,000. There was a deposit of \$20,000 and completion costs of \$197,883.53. Commission of \$10,000 was paid to Olympia. There was an inspection fee of \$150 paid by a cheque signed by Angela. There was a loan advanced to complete and a loan secured by a mortgage in the amount of \$150,000 that was advanced by the Royal Bank of Canada ("RBC"). Philip and Andrew were both the registered owners of the property, each owning a 50% interest, and the mortgagors.

2257 Sicamous Avenue, Coquitlam

- [14] 2257 Sicamous Avenue (the "Sicamous Avenue Property") was purchased on November 22, 1989 for the price of \$102,500. There was a deposit of \$10,250 and a further sum of \$93,901.05 was paid on completion. There were also transfer fees totalling \$1,013. There was no mortgage and the registered owner of the property is Philip.

3235 West 13th Avenue, Vancouver

[15] 3235 West 13th Avenue (the "West 13th Avenue Property") was purchased on August 1, 1992 for the price of \$380,000. There was a deposit of \$20,000 and a completion amount totalling \$142,238.98 was paid. Philip was the registered owner of the property and he was advanced a loan secured by a mortgage in the amount of \$228,000 in favour of the RBC.

3458 West 20th Avenue, Vancouver

[16] 3458 West 20th Avenue (the "West 20th Avenue Property") was purchased for \$364,000 with a deposit of \$20,000 and completion costs of \$134,420.07. Stephanie was the registered owner of the property and received a loan secured by a mortgage in the amount of \$218,400 from the RBC to complete the purchase.

2854 West 31st Avenue, Vancouver

[17] 2854 West 31st Avenue (the "West 31st Avenue Property") was purchased on July 1, 1993 for \$475,000. There was a completion date of August 16, 1993. Stephanie was the registered owner. There was a \$30,000 deposit made to the realtor (Olympia) on July 6, 1993. The \$30,000 was debited from Angela and Dr. Woo's RBC line of credit account on July 6, 1993. Stephanie received a mortgage secured loan on August 3, 1993 in the amount of \$285,000. Additional completion costs of \$169,714.87 were paid by cheque to Lum & Company on August 13, 1993 by a bank draft drawn on Angela's RBC account at the Oakridge branch. Angela and Dr. Woo's line of credit account was debited in that amount on August 13, 1993. There was a contemporaneous wire transfer sent from Stephanie's account at the Wing Lung Bank Ltd. in Hong Kong ("Wing Lung Bank") to Angela's RBC Account No. 781-818-0, located at 2208 West 41st Avenue, in the amount of \$190,000. (\$190,000 is the exact amount of the difference between the purchase price of \$475,000 agreed to on July 1, 1993 and the mortgage of \$285,000 applied for and approved on August 3, 1993.)

[18] Two of the properties referred to above were sold. The West 20th Avenue Property, which was registered to Stephanie, was sold on May 14, 2004 for \$583,000. Stephanie received approximately \$200,000 from the property's proceeds of sale. Additional funds by way of non-resident hold-back and a subsequent tax refund were deposited into Stephanie's account, but were subsequently transferred into Angela's account by Angela, who has treated those sums as repayment of expenses incurred in connection with her management of the properties. The West 23rd Avenue Property, which was registered to Andrew and Philip, was sold for \$655,000 on March 31, 2004. Philip and Andrew each received approximately \$180,000 from the property's proceeds of sale. Philip received about \$166,000 directly and used the balance to repay Olympia (\$13,000) and to pay Angela for some of the expenses that she had incurred (\$1,000).

1121 Nanton Avenue, Vancouver

[19] A separate property at issue is 1121 Nanton Avenue (the "Nanton Avenue Property") in Vancouver. It was purchased on June 10, 1988 for \$359,000. It was purchased outright by Mr. Ng and was registered jointly to Philip and Stephanie. On August 18, 1988 Philip and Stephanie signed a document titled "Declaration of Trust" (the "Declaration of Trust"), which reads as follows:

We, Ng Kwok Piu, Philip and Ng Oi Che, Stephanie of No. 1 Jubilee Street, 8th Floor, Hong Kong hereby declare as follows:-

1. That the detached house (hereinafter call House) 1121 NANTON AVENUE, Shaughnessy, West, Vancouver B.C. Canada (Plan No. 6011, Lot 12, Block 714, District Lot 526) bought in our names through our Power of Attorney, Kay Chee Ng of 3789 Pine Crescent, Vancouver, B.C., Canada was from money remitted by our father Ng Po Sum of 14A Village Road, 9/F., Hong Kong through the Royal Bank of Canada, Kerrisdale Branch, 2208 West 418F Avenue, Vancouver, B.C., and other banks in Hong Kong.
2. That the House, though registered under our names, does not belong to us but to Ng Po Sum and To Pui Kui and their decendants [sic] in such propertion, [sic], or shares as contained in the Memorandum and Articles of Association of "Ng Sheung Ming Association Limited", a company incorporated in Hong Kong.
3. That all income including rental shall be distributed to them in accordance with the said Memorandum and Articles of Association or as direct [sic] by them from time to time.
4. That we shall not sell the property unless sanctioned by our parents, brothers and sisters.
5. That we hereby agree to transfer, deal with and to execute all documents relating to the House as directed by the beneficial owners from time to time.

Woolridge Island

[20] The eighth and final property was an island called Woolridge Island ("Woolridge Island"), which was purchased in December 1995 for \$900,000. In an agreement dated July 3, 1996, it was acknowledged that Eleanor and her husband, Stan, each own a 30% interest in the property; that Angela and her husband, Dr. Woo, each own a 10% interest in the property; and that each of Philip and Stephanie own a 10% interest in the property. The balance of the agreement provided that Angela would manage all income from the property, would hold "the corpus and capital of the property in trust for the benefit of the others and would be indemnified for any liability arising from her management of the property." The agreement also contained some restrictions on alienation and required approval of owners holding not less than 75% interest in the property for guests and "all decisions relating to the property". The agreement was signed by Angela on her own behalf and as power of attorney for Philip and Stephanie.

PHILIP'S EVIDENCE (IN CHIEF)

- [21] Philip is 70 years old. He has never been married and has no dependants. He was born in Hong Kong, received his university education in Canada and returned to Hong Kong to live in 1971. He has lived in Hong Kong ever since. He lives rent free in a two bedroom apartment that was owned by his father.
- [22] From 1973 to 1985 he worked at the Canadian Commission assessing immigration applications and giving counselling to new immigrants to Canada.
- [23] He noticed that because of the impending take-over of Hong Kong by the Mainland Chinese in 1997, many people were emigrating to Canada and/or sending assets there. In 1985 he decided to leave the Canadian Commission and he began his own business called Ng and Ng Consultants Ltd. to assist people wanting to emigrate or to invest in Canada.
- [24] Philip earned approximately \$200,000 per year (CDN) in his business. He attempted to obtain records of his tax returns, but received a letter from the Inland Revenue Department of Hong Kong informing him that there were no records for the years 1988 to 2003. Because most of his income came from commission in Hong Kong, it was already taxed and he was charged "the minimum" so "that is why they don't have (his) record".
- [25] He sent money to Canada for investment purposes from the mid 1980's to the 1990's. Angela, who is a chartered accountant, was willing to help him buy properties, to do his tax returns from rental income earned, and to keep financial records for these properties.
- [26] He was able to locate only a few bank records that reflected his financial state and dealings at the time when the various properties were purchased. His attempts to get records from the Wing Lung Bank and from the Citibank in Hong Kong ("Citibank") resulted in letters informing him that those banks only kept records for the last seven years.
- [27] Angela promised to take care of his investments in Canada, and she agreed to take care of his properties. In exchange, while she did not accept payment, Philip would buy her and Dr. Woo "very expensive gifts" when he came to Canada. He mentioned expensive Chinese foods and herbs and an expensive sweater and tie for Dr. Woo.
- [28] Philip did not receive any periodic accounting from Angela arising from his investment properties despite asking for it. Angela told him she would show the accounts to him when she had time. She completed his tax forms, but he only remembered signing one form - an "NR6" from Revenue Canada (for the taxation year 1989). He signed the form on December 15, 1988 and Angela signed it as his agent on November 15, 1988. The form was an undertaking to file an income tax return by a non-resident receiving rent from real property. It was filled out by Angela showing two rental properties: the West 27th Avenue Property and the Nanton Avenue Property. The form indicated gross rents of \$16,800 and \$17,050, respectively, and interest and miscellaneous expenses of \$34,000 and \$36,000, respectively, for those two properties. Philip was shown as having joint ownership with Stephanie in both properties, each owing a 50% share.

- [29] Philip was shown several other income tax forms including: an income tax return in his name, but not signed by him, showing a net loss of \$5,265 dated April 30, 2003; an NR4 form (Statement of Amounts Paid or Credited to Non-Resident) for 2002 in his name, and with Angela listed as agent, showing gross income of \$77,751; and NR4 form for 2003 in his name, and with Angela listed as agent, showing gross income of \$79,547; and a tax return for 2003 not signed by him, but with a signature in his name, showing a net loss of \$1,241 dated April 30, 2004.
- [30] Philip had about \$400,000 (CDN) in one or more bank accounts in Vancouver in 1985, which had accumulated as he sent wire transfers of smaller amounts over time. He identified a wire transfer from 1987 in the amount of \$10,000 (U.S.) payable to his RBC Account No. 8501-306-01, located in Kerrisdale, from his Citibank account. In addition, a wire transfer from August 1, 1987 in the amount of \$22,168 (U.S.) from his account at the Wing Lung Bank payable to his same RBC account was identified. He also identified a cancelled cheque written to the Wing Lung Bank for \$723,800 (HK) dated May 3, 1989 that was drawn on his Citibank account. On the back of that cheque he had written "for remittance of CAD \$110,000 to Angela K.C. Ng's account in Vancouver". He made that notation "about 1989", and explained the funds were part of those used to purchase properties.
- [31] In March of 1989 Philip signed an agreement relating to the purchase of a property at 3851 Pine Crescent in Vancouver (the "Pine Crescent Property"). His sister, Eleanor, and her husband, Stan, were the primary purchasers, but it was intended that Philip, Angela and Dr. Woo would have a share in the property, which was located next to Angela and Dr. Woo's home. The property was sold through a bidding process and Eleanor and Stan had their eyes on it for some time in part because of its convenient location next to Angela, who had agreed to look after it for them. Because there was only a short period of time between learning of the bidding process and closing off of bids, Angela asked Philip, who was in Vancouver at the time, if he would put up \$250,000 (CDN) as a deposit for Eleanor and Stan in support of their bid. He agreed to do so. He also put up another \$150,000 for the share that Angela and Dr. Woo intended to buy - "an undivided one-third interest" for \$650,000 (CDN). Philip anticipated that providing this amount would permit him use of a coach house located on the property. Angela and Dr. Woo borrowed \$500,000 from the bank and received \$150,000 from Philip to complete their purchase of a one-third interest in the property. The agreement stipulated that Dr. Woo would hold 7.5% of the property in trust for Philip and the balance of 25.83% for himself. That agreement was signed by Philip, Dr. Woo and Angela, but not by Stan or Eleanor.
- [32] Philip identified an RBC statement for Account No. 13053-02 showing a 30 day term deposit of \$66,499.16 (U.S.) for the period October 14, 1985 to November 13, 1985 and a series of RBC statements for Account No. 7901298-01 showing 30 day term deposits ranging in size from \$55,000 (U.S.) to \$142,000 (U.S.) between May 1989 and May 1991. He recalled having those kinds of funds on deposit at the RBC regularly.

- [33] The West 27th Avenue Property was the first property acquired. It was purchased in equal shares between Philip and Stephanie, with each of them putting down \$100,000 towards its purchase. Philip's \$100,000 was deducted from the \$400,000 that he had on deposit in an account or accounts in Canada at the time. Angela recommended the property as a good buy.
- [34] The second property was the Nanton Avenue Property that Mr. Ng purchased. He typically used a limited company to hold property, but in this case, he put the property in Philip's and Stephanie's names because, he said, he was going to give it to them. He did so because they were single and would have no one to look after them in their old age.
- [35] Philip identified the Declaration of Trust drawn up for the Nanton Avenue Property, and he identified his signature on it. Several weeks after his father bought the property, he asked Philip to sign the document and so Philip did. He did not read it nor did he know what it was.
- [36] Later in 1997, before Mr. Ng went to Canada for an operation to remove a tumour, he told Philip that "the trust was taken care of" and that he was "the boss of the house". After Philip signed the Declaration of Trust on August 18, 1988, he did not see it again until after the litigation started.
- [37] The third property was the West 23rd Avenue Property, that Philip bought with Andrew. Andrew said he had no money, so Philip spoke to his father about loaning him the money. Andrew somehow came up with the money and they bought the property that Angela had found for them. The property was sold in March 2004. Philip did not want to sell the property, but Angela told him that Andrew wanted to because he needed the money from its proceeds of sale. Philip never told Angela that he needed money. When the property was sold, he received about \$180,000 from the proceeds of sale. Angela wired two amounts to his bank account in Hong Kong.
- [38] Philip purchased the Sicamous Avenue Property outright, with the money coming from his account(s) in Vancouver. He acquired the West 13th Avenue Property through Angela as well. He always talked to her about the purchases before they were made because she was the one taking care of all of his properties.
- [39] The final property Philip acquired an interest in was Woolridge Island. Angela suggested that it was a good idea to buy an island because there is income to be made from allowing the waterfront to be used for log booms.
- [40] Eventually, Philip learned that he, Stephanie, Angela, Dr. Woo, Eleanor and Stan were all involved in purchasing the property. He and Stephanie each had a 10% share. The money for his share would have been deducted from his bank account(s) in Canada.

- [41] Philip identified the agreement dated July 1996 for the purchase of Woolridge Island. He never saw the document until about 10 years after that date. It was signed on his behalf by Angela. He did not recall Angela ever telling him that she was going to borrow money to pay for his share.
- [42] Sometime later a house was built on Woolridge Island. Philip was opposed to building the house because he did not often come to Canada and thus would have little opportunity to use it.
- [43] Philip said the steps that led to this lawsuit and the breakdown in relations in the family began in 1997 when he undertook to help his two nephews (Jeremy's children) to get set up in a boarding school in Singapore.
- [44] Between December 1997 and March 2002, he went to Singapore 24 times for the welfare of his nephews. His mother, Mrs. To, gave him cheques to pay for all of their expenses and for his own travelling and living expenses while in Singapore. In total, his mother spent about \$1million (HK) for his travel to Singapore. Those expenditures became contentious.
- [45] After that, in 2004, Andrew asked if the family company, called Hultuckfong Enterprises Ltd., would pay for his wife's income tax and education fees. Philip was one of the company directors and had signing authority. Stephanie was another director with signing authority. The other directors were Andrew and Mrs. To, neither of whom had signing authority. Andrew was turned down. Eleanor then sought a director's position on the company board. She was able to get on despite Philip's opposition. Thereafter, Eleanor, Andrew and Mrs. To dismissed Philip and Stephanie from the board and tried to change the signing authority for the company. As a result of the dispute, the Wing Lung Bank froze the company accounts.
- [46] Later, in 2005, Angela sought to become the executor of Mr. Ng's estate; however, Philip objected to her doing so. Angela also wanted to put a second mortgage on one of the properties, which Philip opposed. Then on October 3, 2005, Angela sent Philip a handwritten memo by fax, claiming that he owed her significant amounts of money with respect to the West 13th Avenue Property and as a result of loans she made to him over time. She attached a report for the West 13th Avenue Property showing the deficit that had accumulated from year to year as a result of expenses exceeding income earned from the property. The memo/letter reads as follows:

Dear Philip

Enclosed is a report on your rental property at 3235 W. 13th Avenue, Vancouver from 1992 to December 31, 2004. The total deficit before withholding tax and capital expenditure amounts to CDN \$114,753.52. This amount is due upon receipt of this fax. Deficit for this year together with withholding tax is estimated to be \$15,000. Therefore, please wire CDN \$130,000 to my bank account (in Canadian funds) as follows:

Bank of Montreal, Arbutus Mall

108 - 4255 Arbutus Street, Vancouver, B.C.

Canada, V6J 4R1

Branch Transit: 0986

Account No. 5116 - 716

Name of Account: Ng, Kay Chee

I have not received any payment so far for the amounts I loaned to you from 1999 to 2003. They are well overdue.

Details of these loans are as follows:

Date of Loan

Amount in CDN Funds

Amount in U.S. Funds

1999-03-29

\$10,000

1999-06-17

\$20,000

1999-12-01

\$20,000

2003-03-03

\$10,000

2003-05-14

\$10,000

2003-11-03

\$26,000

2001-03-21

\$10,000

Total:

CDN \$96,000

U.S. \$10,000

Please wire the Cdn \$96,000 to my bank account listed in the cover page and send me a draft of U.S. \$10,000 to my home address.

I would like to remind you that you have not paid me the \$200,000 Cdn. for the purchase of 10% share of Woolridge Island. This amount is also well overdue.

Therefore, the total amount to be remitted to me in Cdn \$426,000 (\$130,000 + \$96,000 + \$200,000) plus a cheque of U.S. \$10,000.

Once I finish the report on your other properties, I shall fax it to you.

Please send me the detail of the money you have sent me for the purchase of your rental properties. I would like to verify my figures before I send you a detail summary.

- [47] Philip recalled no discussions with Angela about there being deficits on any of the properties. He denied borrowing any money from Angela between 1999 and 2003. She never told him that he owed money for Woolridge Island.
- [48] Philip never received a further detailed summary from Angela regarding his rental properties as she undertook to send him in her letter.
- [49] Philip identified three pages styled as Schedules 1, 2 and 3. Schedule 1 was a summary of "combined cash flows reflecting the total amounts sent to Angela by Philip and Stephanie between 1988 and 2005". Schedule 2 set out what was sent by Stephanie alone. Schedule 3 set out what was sent by Philip alone. The schedules also showed the rental income and miscellaneous income kept by Angela and what expenses were paid by Angela.
- [50] According to Schedule 1, the total combined funds that were sent to Angela, or kept from revenues or otherwise by her, was \$3,872,849.45, and the total amount expended in relation to the properties was \$3,267,361.54, leaving an amount owing to Philip and Stephanie of \$605,487.91.
- [51] In relation to Stephanie, the amount paid and kept from revenues or otherwise was \$2,109,444.03, and the total amount expended in relation to the properties was \$1,635,346.37, leaving an outstanding balance owing from Angela to Stephanie of \$474,097.66.
- [52] In connection with Philip, the total amount sent and kept from revenues or otherwise was \$1,363,405.42, and the amount expended through Angela was \$1,632,015.17. Schedule 3 shows \$131,390.25 owing to Philip from Angela, although the figures on Schedule 3 do not support that conclusion. The numbers in Schedule 3 when calculated show that Philip would owe Angela \$268,609.75.
- [53] Of the funds said to be sent by Philip, by 1988 there was \$400,000. In 1989 there was \$160,000. In 1990 there was \$60,000. In 1992 there was \$80,000. In 1993 there was \$50,000. The total amount claimed by Philip to have sent to Canada was \$750,000.

- [54] Of the funds said to be sent by Stephanie, in 1988 there was \$108,000. In 1989 there was \$3,000 (cash). In 1990 there was \$60,000. In 1992 there was \$67,232.48. In 1993 there was \$210,000. In 1994 there was \$145,384. In 1995 there was \$50,000. In 1996 there was \$50,000. In 1997 there was \$110,000. In 2000 there was \$19,000 and in 2005 there was \$40,000. There is a total therefore of \$862,616.48.
- [55] Philip had few records to support his contention of having sent a total of \$750,000 to Angela from 1988 to 1993.
- [56] He was shown a document drawn up by Angela said to show personal loans made by her and Dr. Woo to him, totalling \$126,761.98, between 1994 and 2001. He explained that those sums were not related to loans; instead, they were related to payments made to him by Angela for purchasing various things on her behalf - including Royal Doulton china (\$15,034), two Rolex watches (\$19,026.50), and two sets of antique rosewood furniture (\$20,041.50 each) - and to returns made to him of his own money in 2001 (\$10,025.50 (U.S.) or \$15,523.80 (CDN)) and in 2003 (\$10,045, \$26,050, and \$10,000).
- [57] Philip was shown another document prepared by Angela that was said to show personal expenses paid by her and Dr. Woo for Philip. An expense of \$1,689.94 was for an immigration publication paid on Philip's behalf. He testified that he repaid her whenever he was in Canada for those expenses. Travel expenses in the amount of \$21,215 were for trips Angela booked for Philip on her Visa to get points. Philip explained that if the trips included their father, their father would pay for the whole amount, and if Philip alone went on the trips, he would pay Angela back by cash.
- [58] There was a sum of \$8,248.20 for Visa payments, some of which were for dinners. He explained that Angela would pay with Visa to get points, and he would pay her back, usually immediately. There was also \$32,504.08 for miscellaneous expenses. Philip explained that he had no recollection of: association fees for \$10 in 1992; legal fees of \$364.09 in 1991, 1992 and 1998; medical fees of \$230.34 in 1990, 1994 and 2003; or postage amounting to \$68.65 for 1995, 1997 and 2007.
- [59] There was a sum of \$31,831 allocated as "repayment to Eleanor" in 1998 that Philip had no knowledge of. He did not hear of Angela's claim that she had repaid Eleanor that sum on his behalf until after the litigation began.
- [60] Philip was shown a summary of income tax from 1988 to 2006 which revealed a net credit to Philip of \$37,750.42. He said that Angela never provided him with any information concerning the tax filings in Canada for the properties.

CROSS-EXAMINATION OF PHILIP

- [61] Philip's credibility and reliability as a witness was challenged from a number of perspectives on cross-examination. It was pointed out that his evidence in cross-examination at trial about what the money that his mother was suing him for in Hong Kong was quite different and was much more detailed than his evidence in his examination for discovery.
- [62] He was also challenged in cross-examination on his assertion that he had \$400,000 in Canada in 1985 when he just started his business. He conceded that he made a slip, and instead he should have said that he had \$400,000 in 1988.
- [63] Philip was also inconsistent in his evidence about what bank the total \$750,000 he claimed to have wire-transferred to Canada came from. He initially claimed that the source of the funds came from the Wing Lung Bank, but later changed his evidence when it was pointed out that he sought records for Citibank as well. He also acknowledged being mistaken about what banks he used in Canada, initially asserting that he banked at the RBC, but then later conceding that he also banked at Canada Trust.
- [64] He said that he sent the initial \$400,000 in small amounts, but later indicated that he could not recall whether the amounts he sent were big or small. He was unable to explain a discrepancy in an earlier version of the summary of funds sent to Angela and the version submitted as an exhibit; specifically, he was unable to recall why \$208,617 was originally claimed as a remittance that he made, but then was later reversed. He could not explain other changes to the chart, explaining that his accountant drew up the chart.
- [65] Philip agreed that the wire transfers for \$10,000 (U.S.) and \$22,168 (U.S.) comprised part of the \$400,000 accumulated to 1988 even though he confirmed at his examination for discovery that he was unable to provide any documents evidencing the transfer of those funds.
- [66] He couldn't recall which bank the \$250,000 he claimed to have loaned to the Cheungs for a down payment on their Pine Crescent home came from, although in examination for discovery, he asserted that it came from Canada Trust. In cross-examination, he was uncertain whether it was repaid, but in his examination for discovery, he asserted that it was repaid.
- [67] As to the \$150,000 paid to the Cheungs for Philip's use of the coach house at the Pine Crescent Property, he asserted that it came from the \$400,000 that he also claimed was used to contribute to the purchase of the investment properties through Angela. He agreed that if that were the case, \$150,000 should be "backed out of" the amount that he claimed he had contributed to the property purchases and maintenance.
- [68] Although he claimed to have filed some tax returns in Hong Kong between 1988 and 2002, he acknowledged that the Inland Revenue Department letter indicated that they had no returns on file.

- [69] Philip also had considerable difficulties in recalling the nature and sequence of events leading up to his and Stephanie's purchase of the first house (the West 27th Avenue Property), and in particular, how it came to his attention and when and how Stephanie first became involved.
- [70] In relation to the West 23rd Avenue Property, he could not recall having a discussion with Andrew about it but acknowledged that he signed documentation with Andrew regarding the purchase. Philip's evidence was contrary to Andrew's on that point.
- [71] There was also inconsistency between his examination for discovery and his testimony at trial regarding whether his father had said anything when Philip had asked him to loan money to Andrew to purchase the West 23rd Avenue Property.
- [72] He also changes his evidence about whether he signed any documents relative to the property purchases, initially claiming that he did not, but later conceding that he did with respect to the West 23rd Avenue Property.
- [73] He was inconsistent about whether his father told him why he was giving him and Stephanie the Nanton Avenue Property. In his examination for discovery he could not recall, but in direct at trial he explained that it was because they were single and would have no one to look after them.
- [74] So far as the Declaration of Trust is concerned, Philip's evidence was contradictory. He claimed that when he signed it, he didn't realize what it related to and did not learn about it until after the litigation started; however, he also asserted that his father had told him that "the trust has been taken care of". He had some difficulty in reconciling those variations in his evidence.
- [75] The defendants challenged Philip's veracity in asserting that Angela never provided any accounting information regarding the properties over the course of 15 years and that he only asked five or six times in that period for an accounting.
- [76] Philip was also inconsistent on other points, including on whether or not his father as well as his mother had asked him to go to Singapore to help Jeremy's children, whether he knew or not that his father was a company secretary, or whether he or Angela were the first of the family to return to Hong Kong after going to Canada to school.
- [77] The defendants contend that Philip's inconsistencies and contradictions render his evidence unreliable and incredible and that it should be rejected.

THE EVIDENCE OF STEPHANIE NG (IN CHIEF)

- [78] Stephanie is 56 years old. She is the second youngest in the Ng family and lives in Hong Kong in an apartment owned by family companies on a rent-free basis. She is not married and has no dependents.

- [79] Stephanie received a Bachelor of Arts from McGill in 1977. In 1978 she returned to Hong Kong and went to work for her brother Tony's company (Tony Ng and Company). She worked in the company secretary section doing company secretary work. That work involved incorporating new companies, preparing all documents required for the companies, attending meetings of the company's directors, preparing minutes and filing annual reports to the company's registry in Hong Kong. She continued working at Tony Ng and Company until 1986 when she began her own business by acquiring a company, which she renamed Vercos Limited ("Vercos"). Through that company, she provides secretarial services to companies located in Hong Kong. She is the sole owner of another company called Euro Asia Company Limited, which is "one of the shareholder companies [she] uses in Vercos Ltd." She also uses another company, Clayton International Ltd., as part owner of Vercos.
- [80] Vercos is not a chartered secretarial company but it need not be to provide the services that it does. Stephanie's father, Mr. Ng, was originally one of the directors of Vercos, but he was a nominal director only. He did no work for Tony Ng and Company but had his own company called Ng Po Sum and Company, which provided tax services.
- [81] Stephanie acquired Vercos as a shell company. It had a tax loss of \$5 million (HK) and a shareholder's loan in the same amount. In the result, she was able to write-off the tax loss against her income and to derive tax free income from the repayment of the shareholder's loan.
- [82] Between 1986 and 1998 she earned an average of between \$100,000 and \$150,000 (CDN) each year. She obtained copies of her tax assessment forms from 1994 to 2004. Her income was largely tax free because the company paid the taxes.
- [83] Stephanie produced a certified copy of an affirmation sworn by her mother in Hong Kong legal proceedings to which four worksheets prepared by Tony were attached. The worksheets showed how profits made by Tony's company and Stephanie's company were to be distributed between them as they referred clients to one another. The worksheet related to 1990 and showed income to Stephanie by way of shareholder's loan repayment of \$311,957 (HK) and a tax free bonus of \$365,209 (HK).
- [84] In 1991 she received \$424,000 by way of a shareholder's loan repayment and \$294,733 as a tax free bonus.
- [85] In 1992 she received \$528,000 (HK) by way of a shareholder's loan repayment and 30% - 40% of \$701,558 (HK) according to Tony's worksheet from that year. Although there was no worksheet for 1993, Stephanie recalled receiving in the neighbourhood of \$900,000 (HK) on a tax-free basis.
- [86] In 1994 she received \$494,000 (HK) by way of a shareholder's loan repayment and 30% - 40% of \$878,408 (HK) by way of bonus. In 1995 she recalled about a \$1 million repayment of a shareholder's loan together with a tax-free bonus. In 1996 the worksheet showed a \$796,000 (HK) repayment and 30% - 40% of \$621,994 (HK) by way of bonus. In 1997 the worksheet

showed that she obtained \$819,000 (HK) by way of repayment of a shareholder's loan, but received no bonus. In 1998 it showed she received \$886,000 (HK) by way of repayment of a shareholder's loan.

- [87] In the 1998 Inland Revenue document Stephanie acquired, it showed her assessable income was \$886,000, (HK) the same amount shown on Tony's worksheet from 1998. In 1997 the Internal Revenue document showed \$819,000 (HK) as assessment income, and in 1996 it was \$793,000 (HK), which again corresponded to what was on Tony's worksheet.
- [88] In addition, there was general correspondence between the amount shown on the worksheets and the amounts shown on the tax returns for 1996 to 1998.
- [89] 1995 was the last year for repayment of the Vercos shareholder loan.
- [90] Up until 1995 her actual compensation was as shown in the worksheets and was payable by way of shareholder's loans and tax free bonuses.
- [91] Stephanie had other sources of income through investments. In 1997 she and Eleanor bought a house in Hong Kong as an investment. They sold it approximately a year later and received about \$100,000 (CDN) in after tax profits.
- [92] She tried to get banking records to show her financial status and the transactions that occurred throughout the material times. The banks included the Hang Seng Bank, Wing Lung Bank and the Bank of East Asia. Some of the replies she received indicated that the bank records only went back seven years from the date she made the inquiry in early 2010.
- [93] Stephanie decided to invest in real estate in Vancouver because of the impending take-over of Hong Kong in 1997. She talked to Angela and told her that she had some surplus money and asked Angela to look for properties for her. She sent Angela money and gave her a power of attorney for that purpose. Angela was to look after the properties, including their financing and management, and she agreed to file all the necessary tax returns required by Revenue Canada. There was no agreement for compensation but Stephanie bought Angela gifts, including a diamond brooch, seafood and clothing for her children.
- [94] Stephanie mainly sent Angela money by wire transfer whenever she had surplus money. She never had to borrow money from Angela because she "made a big profit from her (business)."
- [95] Stephanie recalled sending Angela money by wire transfer for the purchase of the West 27th Avenue Property with Philip, but had no record of it. She wrote down some information on a note for her own reference. She explained that the note showed that there was an initial deposit of \$136,000, which was 40% of the value of the property. She understood that that amount would automatically qualify them for a mortgage. Nonetheless, Stephanie and Philip sent an additional \$80,000 to Angela, making the total amount received by her \$216,000. On the note Stephanie wrote, "I have already pay CDN \$108,000", which was her half share of the down payment. Next to that, she inserted the date "October 5, 1988". She

also wrote down "3,000" and the date "April 10, 1989" to indicate that she gave Angela another \$3,000 on that date.

- [96] It was a note to herself to show how much she had contributed towards the property purchase. Stephanie learned about the property from Angela and asked Philip "to chip in 50/50".
- [97] She testified that her father bought that Nanton Avenue Property outright, and after it was purchased, he told her and Philip that it belonged to them because it was under their name. A few weeks later, her father asked her to sign the Declaration of Trust and she did, but she did not look at it. She signed it because she was used to obeying her father. Later, in 1997, before he left for Canada for an operation on a tumour, her father told her that he had taken care of the trust and that she and Philip were the registered owners.
- [98] She took no notice of the trust until the litigation started.
- [99] The next property she acquired was the West 20th Avenue Property in 1992. By then she had sent sufficient money to Angela to allow Angela to purchase the property on her behalf. The property was sold in 2004 after Stephanie asked Angela to sell it. The fear of the take-over had abated by that time, and Stephanie had other properties in Vancouver and thought she might as well move some of her money back to Hong Kong. She received approximately \$200,000 from Angela after that sale. There was also a tax refund owing to her from the sale of the property due to the rule that requires a certain percentage of the proceeds of sale to be held back where the seller is a non-resident to ensure that the applicable taxes are paid.
- [100] In May 2004 Angela told Stephanie that the tax refund would be made in about a year.
- [101] In about September of 2005, Angela told Stephanie that Stephanie owed her money and that Angela would have to put a second mortgage on the West 31st Avenue Property to secure the debt. Stephanie asked her about the tax refund from the sale of the West 20th Avenue Property, and Angela said it had not yet been returned. In October 2005, Angela sent Stephanie a fax concerning Stephanie's indebtedness. Following that fax, Stephanie made her own inquiry about the tax refund owing on the West 20th Avenue Property and in November 2005, learned that it had already been refunded. She determined that Lum & Company, the law firm who handled the transaction, had paid out \$94,792.74 on July 20, 2004 to Angela. Angela deposited that amount in Stephanie's account in Vancouver, but subsequently withdrew it.
- [102] Stephanie was also involved in the purchase of the West 31st Avenue Property in 1993. In around July of that year, Angela told Stephanie that she had found a property on West 31st, and so in July 1993 Stephanie sent Angela the sum of \$190,000 by wire transfer. The wire transfer was dated July 19, 1993, drawn on the Wing Lung Bank from an account in Stephanie's name. The wire transfer transferred funds from Account No. 0660624826, which was one of Stephanie's accounts with the Wing Lung Bank.

- [103] Some time later, Stephanie was in Vancouver and signed the mortgage documents on her own behalf. Angela never told Stephanie before September 2005 that she owed any money for the West 31st Avenue Property nor did she provide Stephanie with any sort of accounting in connection with that property or any other property.
- [104] The final property Stephanie became involved with was Woolridge Island along with Philip, Eleanor, Stan, Angela and Dr. Woo. She was shown the agreement dated July 3, 1996 relating to the ownership of Woolridge Island for the first time in 2006. She never talked to Angela about the document and never received an accounting in connection with Woolridge Island expenditures.
- [105] She understood that Angela would do all of the necessary tax filings in connection with her properties, but only saw one document - an NR6 form for the tax year 1989. She signed it on December 15, 1988. It showed her as 50% owner of the Nanton Avenue Property, with gross rentals of \$17,050 and expenses of \$36,000, and of the West 27th Avenue Property, with gross rentals of \$16,800 and expenses of \$34,000. The form indicated that she was joint owner with Philip in each property.
- [106] Stephanie never saw any other tax records provided by Angela. She never spoke to Angela about taxes beyond Angela telling her that they were all filled out and filed on time.
- [107] After the litigation began, Stephanie was able to obtain some tax records. The records she obtained were signed by someone else in her name. The address shown for her was Angela's.
- [108] Stephanie described the breakdown of relations among the Ng family members following her father's death in 2002 in similar terms as Phillip. She described receiving a memo faxed from Angela on October 5th, 2005 with an attachment said to show her indebtedness with respect to the West 31st Avenue Property. The fax read as follows:

Dear Stephanie

Enclosed is a report on your rental property at 2854 W. 31st Avenue, Vancouver from 1993 to December 31, 2004. The total rental loss before withholding tax and capital expenditures amounts to CDN \$83,937.47. This is the amount you owed me and is currently overdue. Deficit for this year is estimated to be \$10,000. Therefore, please wire CDN \$93,937.47 to my bank account (in Canadian funds).

Bank of Montreal, Arbutus Mall

108 - 4255 Arbutus Street, Vancouver, B.C. Canada, V6J 4R1

Branch Transit: 0986

Account No. 5116-716

Name of Account: Kay Chee Ng

Once I finish the report on your other properties, I shall fax it to you.

Please send me the detail of the money you have sent to me for the purchase of your rental properties. I would like to verify my figures before I send you a detail summary.

- [109] Stephanie spoke to Angela and told her that she did not owe any money and reminded her she had her tax refund cheque coming. She did not agree to Angela putting a mortgage on her West 31st Avenue Property. She wired her \$40,000 because she thought Angela needed the money.
- [110] Stephanie did not receive any further details from Angela with respect to the other properties until after the litigation started. Stephanie did not send Angela details of the money she sent to Angela until after the litigation started because she could not initially find the forms regarding the wire transfers.
- [111] Stephanie identified the wire transfer relating to the \$40,000 that she sent Angela on October 6, 2005. Stephanie never told Angela she could do whatever she liked with respect to taking out a second mortgage. She had money in her accounts and did not need a second mortgage.
- [112] At the beginning of 2006, Stephanie spoke with Olympia about selling the West 31st Avenue Property in order to use its proceeds to invest in the Hong Kong market. Olympia did a title search and realized that all of the rental properties and the Nanton Avenue Property were mortgaged by Angela. Olympia advised Stephanie of the mortgages, and upon discovering that information, Stephanie revoked Angela's power of attorney in March 2006.
- [113] The action began in July 2006. After the litigation was commenced in Canada, Mrs. To started an action against Phillip and Stephanie in Hong Kong near the end of 2006.
- [114] Stephanie clarified that there was a change to an earlier schedule that had reflected a remittance to Angela of \$208,618 in 1994. Stephanie was no longer claiming the remittance because it was a remittance from Tony's company.
- [115] Stephanie identified a statement reconstruction from the RBC for an account in her name, c/o Angela's address, for the period from January 1, 2004 to January 1, 2006. That statement reflected transactions dealing with the sale of the West 20th Avenue Property.
- [116] On May 14, 2004 there were deposits of \$247,357.74 and \$9,589.74 reflecting the proceeds of sale. On the same date, \$200,045 was wired to Stephanie in Hong Kong. On May 18, 2004, \$57,000 was withdrawn by Angela. On September 15, 2004, \$94,692.74 was deposited which was the amount held back by lawyers for potential taxes. \$95,005 was withdrawn by Angela on the same day. On November 3, 2005, \$24,350 was deposited. That amount was for a refund of taxes paid on the rental income for the property. It was withdrawn by Angela on the same day.

- [117] Stephanie identified a number of wire transfers that reflected money she had sent to Angela. She had the original wire transfers in a drawer in her office. The various wire transfers were for the acquisition of the properties in Vancouver.
- [118] The first wire transfer identified by Stephanie was for \$60,000 (CDN) (\$404,760 HK) on October 15, 1990 from the Wing Lung Bank, debiting Account No. 01-203-2106-7. The wire transfer was made out in Stephanie's name and was sent to Angela's account at the RBC.
- [119] On February 13, 1992, there was a wire transfer of \$6,079.03 (CDN) (\$40,000 HK) to Angela's RBC account from Stephanie's HSB Account No. 218-3-034262.
- [120] On February 20, 1992 there was a wire transfer from the First Pacific Bank Account No. 66-1-827985 to Angela in the amount of \$28,231.32 (U.S.) (\$220,000 HK). The wire transfer showed Stephanie as "sender".
- [121] On June 12, 1992 there was a wire transfer to Angela from Stephanie as sender drawn on HSB Account No. 218-3-004262. It was for \$20,000 (CDN) (\$130,000 HK).
- [122] On September 22, 1992 there was a wire transfer from HSB Account No. 218-3-004262, with Stephanie as sender, to Angela for \$10,000 (CDN) (\$62,680 HK) for property purchase.
- [123] In 1993, in addition to the \$190,000 transferred on July 19, 1993, there was a transfer of \$20,000 (CDN) (\$117,450 HK) from HSB Account No. 2183-004262, with Stephanie as sender, to Angela. The wire transfer was dated September 3rd, 1993.
- [124] Stephanie claimed to have made a remittance to Angela in the amount of \$145,384 in 1994; however, there was no wire transfer for that transaction. Her father had borrowed the money from her and had remitted it to Angela for a property purchase that never took place. Stephanie never received the money back from Angela.
- [125] On December 20, 1995 there was a transfer in the amount of \$50,000 (CDN) (\$282,150 HK) to Angela's account in Vancouver from Stephanie's HSB Account No. 267295632-888 for property purchase.
- [126] On April 29, 1996 a wire transfer in the amount of \$50,000 (CDN) from Stephanie's same account to Angela's RBC account in Vancouver was sent for property investment.
- [127] On June 26, 1997 a wire transfer from the Wing Lung Bank in the amount of \$45,000 (CDN) was sent to Angela's account. Stephanie wrote some notes on the wire transfer to indicate what the funds were to be used for and where they were from. She wrote "1103" referring to 1103 Cornhill, the apartment in Hong Kong that she and Eleanor sold for a profit ("Cornhill"). She also wrote \$10,000 for "other houses" and \$30,000 for Island (meaning Woolridge Island). She sent \$3,000 for Angela and \$2,000 for Olympia to share her joy at the profit she made from Cornhill.

- [128] The next wire transfer was on September 5, 1997 for \$70,000 (CDN) to Angela's account from the Wing Lung Bank for property investment in Canada. She again made notes indicating that the funds were from the sale of Cornhill. She indicated that \$50,000 was to be repaid to Angela and that \$20,000 was to be allocated for 1998 expenses.
- [129] On November 6, 1997 there was a wire transfer of \$4,000 from Stephanie's account at the Wing Lung Bank to Angela's account at RBC. It was a donation made to Angela's daughter's school.
- [130] Stephanie claimed a credit of \$19,000 for money that Angela spent in Hong Kong after Stephanie had "set her up with the amount" in 2000.
- [131] The last amount exchanged was the \$40,000 (CDN) wire transfer made in October 2005, which Stephanie sent in response to Angela's October 5, 2005 fax demanding payment.
- [132] Stephanie claimed that Eleanor never gave her money for any purpose except for "lucky money" for birthdays or New Years. In particular, Eleanor never gave Stephanie any money to give to Angela.
- [133] Stephanie was shown a handwritten document that she identified as being in Angela's handwriting. The document set out a list of accounts in Vancouver and to whom those accounts related. Stephanie was never asked to transfer money for Eleanor to Angela. She was shown a list of expenses that Angela claimed to have paid for on Stephanie's behalf.
- [134] Stephanie explained that either Angela did not tell Stephanie about the payments she was making, or Stephanie paid Angela back for the items Angela claimed to have paid for. The total amount that Angela claimed to be owed was \$15,690. The largest individual item was a fur coat worth \$2,600 in 1989. Angela paid for it with her credit card to get points, and Stephanie immediately repaid her. There was a \$10 fee for membership in the South Shaughnessy Properties Owner's Association in 1992 that Stephanie knew nothing about. There were additional amounts totalling \$364 for payments made to Lum & Company for property transactions in 1987 and 1991 that Stephanie knew nothing about. In addition, there were expenses for "cultural tours" from 1991 to 1996 that Stephanie knew nothing about. Regarding the "cultural tours", Stephanie confirmed that their father would pay for their trips if he accompanied them. There were also two charges for postage - one from 1989 and one from 2007 - that she was neither told nor knew anything about.
- [135] Stephanie was shown another summary prepared by Angela of her income tax from 1988 - 2006. It showed a net refund due of \$92,250. The summary included the non-residents withholding tax paid, the \$94,692.74 refund of the non-resident holdback from Lum & Company in 2004, and the \$24,350.06 tax refund from the remaining non-residents tax holdback arising from the sale of the West 20th Avenue Property in 2004. She had not seen the summary before. She was aware of the \$94,692.74 refund, but never received it from Angela.

- [136] Stephanie was shown a handwritten note from 1997 itemizing her father's medical expenses. The note showed an outstanding balance of \$1,276.49 and \$74,930 already remitted to Angela. The money was paid by Mr. Ng; it did not come from her wire transfers.

CROSS-EXAMINATION OF STEPHANIE

- [137] Stephanie's cross-examination focussed on inconsistencies and what the defendants seek to characterize as implausible or laboured explanations or evidence.
- [138] At one point, Stephanie testified her father provided services to her company, Vercos, and received a director's fee, but on discovery she asserted that "he got a salary". At trial, Stephanie testified to paying \$3 to acquire the shares of Vercos and \$3 to acquire the shareholder's loan. However, on discovery, she asserted that she could not remember whether she paid any money to anybody "for shares or otherwise of Vercos or not". She attributed her lack of memory on a number of matters at the examination for discovery as due to nervousness.
- [139] She was cross-examined about her father's role both in Vercos and in Tony's company, initially asserting that he was the bookkeeper helping out rather than a dominant force in those companies. She acknowledged that some of Vercos' money was transferred to her father's account, claiming that it was there "to save the tax on ... interest income" but that it "would be transferred back". She agreed ultimately with the proposition put to her that the reason why her father was moving money around was because Vercos was his company, and thus he decided where money went.
- [140] She asserted that the Vercos tax losses and payments by shareholder loans saved her a lot of money, but agreed that on discovery she did not mention them nor did she produce documentary evidence proving that they existed.
- [141] She agreed that she did not produce the wire transfers that she relied on as evidencing her contributions towards the property investments until November 2008, although she kept them in a file folder in her office. She agreed that she had kept them as proof of her contributions. She testified that the importance of the documents "didn't come to her mind" until November of 2008 even though she knew that there was a lot of money at stake.
- [142] As to her evidence of giving Angela \$108,000 for the purchase of the West 27th Avenue Property in June 1988, Stephanie appeared to agree that she sent the money on October 5, 1988 according to her note. However, when confronted about the discrepancy regarding when the house was purchased, she indicated that she had misunderstood and that October 5, 1988 was when she wrote the note, not when the money was sent.
- [143] In her examination for discovery she had some difficulty explaining the significance of the numbers \$136,000 and \$80,000 in her note, saying that she couldn't remember where she got those figures from. However, on cross-examination she explained that \$136,000 was 40% of the purchase price - which was the amount that would qualify her and Philip for a

mortgage - and that \$80,000 was an additional amount that they transferred to Angela for the down payment. She could not recall why she had no wire transfers for those amounts and why she had to make the notes. She could not recall what bank it came from, but then recalled it was the Wing Lung Bank, which was the bank she had accounts with between 1986 and 1996. At her examination for discovery, she could not recall the name of her bank.

- [144] She agreed that the \$60,000 wire transfer on October 15, 1990 drawn on Wing Lung Bank Account No. 01-203-2106-7 was her father's account. However, she also asserted that it was her money, which he was returning to her. She agreed that at her examination for discovery she claimed that it was her account, but since then, she "thought it over" and realized that it was her father's account.
- [145] She asserted that the money came from Vercos and went into her father's account to earn interest. She said that the reason for this was because individuals don't have to pay tax on interest whereas corporations are charged "bank interest income".
- [146] However, Stephanie also agreed that she could have received the same benefit by putting the money in her own account.
- [147] Stephanie agreed in cross-examination that she sent four transfers of funds in 1992 for property investments in the event that property became available for purchase. However, when asked about the transfers at her examination for discovery, Stephanie said that she sent them to cover property expenses for the West 20th Avenue Property and for the West 27th Avenue Property. She stated that "if there is a surplus, it will be used for the coming property."
- [148] She denied transferring money for Eleanor in cross-examination at trial, but was less definitive in her examination for discovery saying instead that she "couldn't remember that" or that she "could not see the reason why ... Eleanor had to use her account". She said she "can't remember".
- [149] At trial in cross-examination Stephanie denied that Vercos ever did any work for Eleanor, but in her examination for discovery she asserted that Vercos did work for Eleanor "at times".
- [150] Stephanie had originally testified that the Wing Lung Bank was the only bank she had at the time of the four transfers in 1992. However, when confronted with evidence that one of the transfers was from the First Pacific Bank, she asserted that that was also one of her banks. In her examination for discovery evidence she could not recall why she sent funds amounting to \$28,231.32 (U.S.), but at trial she asserted it was because Angela had requested it.

- [151] As to the \$190,000 transfer, Stephanie testified at trial that the funds were sent for the down payment of the West 31st Avenue Property and that she had a conversation with Angela about that. In her examination for discovery, however, she denied recalling a specific conversation and instead said that it "must be - she must have told me there is a house over there".
- [152] Stephanie also conceded that she was wrong about the banks she dealt with at the material time when confronted with a transfer from the Hang Seng Bank.
- [153] She asserted at trial that in 1995 she sent \$50,000 to Angela for Woolridge Island, but on her examination for discovery, she asserted that she could not remember if it was sent for any particular property.
- [154] As to the notes on the \$45,000 wire transfer that indicated \$10,000 for "other houses" and \$30,000 for "Island", Stephanie asserted that she made the notes soon after the wire transfer; however in her examination for discovery, she could not recall when she made them. She similarly testified that she sent \$30,000 in 1997 for Woolridge Island, but in her examination for discovery she stated that she could not remember.
- [155] In cross-examination regarding the Nanton Avenue Property, Stephanie testified that her father told her that he had taken care of the trust, that everything is settled, and that she is the registered owner. In her examination for discovery, she said it somewhat differently, and she couldn't recall if anyone else was present when her father said those things to her in contrast to a clear recollection at trial that she and her father were alone.
- [156] Stephanie's and Philip's testimonies regarding the West 27th Avenue Property were contradictory. She said that she told Philip about it and asked him to chip in; he said the opposite, that is, that he told Stephanie about it and invited her to become involved.
- [157] On her discovery, Stephanie had no recollection of any discussions about the West 27th Avenue Property with Philip.
- [158] She testified that she had no discussion with Eleanor about Woolridge Island, which, the defendants submit, makes no sense. Stephanie's evidence on discovery concerning the telephone discussion she had with Angela in September of 2005 was different from her evidence at trial. On discovery, she only recalled speaking about wanting to sell her houses. At trial, she recalled Angela talking to her about putting a second mortgage on the West 31st Avenue Property and some discussion about the tax refund from the earlier property sale.

THE EVIDENCE OF OLYMPIA JUE

- [159] Olympia is 61 years of age. She is and since 1987 has been a licensed realtor. She became involved with the properties through Angela, who requested that she look for properties for Stephanie and Philip and to show them to her. Olympia would write an offer for Angela and if the offer was accepted, she would then attend to finding tenants, preparing the lease and giving the post-dated cheques for the rent to Angela. She was responsible for dealing with

the tenants and dealing with issues of maintenance of the various houses and properties. She was reimbursed for her expenses through Angela.

[160] She also listed the homes for sale when needed.

[161] She had no discussions with Angela, Philip or Stephanie about the financing arrangements of the properties, or about any of the properties generally.

[162] Whenever Olympia drew up an offer, Angela would tell her whether the purchaser would be Philip or Stephanie. Angela told her that they had money and were looking for houses. Regarding the West 31st Avenue Property, Olympia told Angela to hold off buying the property, but Angela insisted that "Stephanie wants to buy a house".

[163] Olympia was involved in the purchase of the Nanton Avenue Property. Angela told her it was their father who bought the house. It was purchased in Stephanie's and Philip's names. Angela told Olympia to put the property in their names but did not tell her why.

[164] Olympia assumed the property belonged to Stephanie and Philip. In May of 1997, she spoke with her father about the properties while he was in Vancouver after an operation. While out walking, he told her that he divided the shares in his property amongst all of his children and that he gave the Nanton Avenue Property to Stephanie and Philip. Olympia never spoke to Philip or Stephanie about the Nanton Avenue Property until after the litigation arose.

[165] Olympia had a document listing all of the properties that she managed, including the Nanton Avenue Property, with the names of those associated to the property noted beside each one. The Nanton Avenue Property showed her father being associated to the property for expenses incurred between July and October of 1998.

[166] Angela showed her the Declaration of Trust in 2005 and warned her not to sell the Nanton Avenue Property.

[167] She was involved with the sale of the West 23rd Avenue Property, which Angela told her Philip and Andrew wanted to sell. She did not know what happened to the funds after that property was sold.

[168] In relation to the West 20th Avenue Property, in 2006 Stephanie asked Olympia to determine what happened to the non-residents withholding tax after the property was sold. When Olympia investigated, she discovered that the solicitors who handled the sale issued a cheque for \$94,692.74 on July 20, 2004. The cheque was deposited into Stephanie's RBC account on September 15, 2004 but was also withdrawn on that same day. She also discovered that a deposit of \$24,350.06 was made to Stephanie's Canadian bank account on November 3, 2005; however, that amount was also withdrawn on that same day.

[169] In cross-examination Olympia testified that she continued to identify thae Nanton Avenue Property with her father's name "to make it easier for Angela to identify the property and myself too". She was asked whether the address "was a pretty good identifier of the property", and she responded, "when you are talking about one property, yes". She was also cross-examined about the veracity of her reported conversation with her father.

ANGELA'S EVIDENCE (IN CHIEF)

[170] Angela is 63 years old. She has a Bachelor of Commerce and a Master of Commerce. She is a chartered accountant and a certified general accountant in Canada and is a certified public accountant in Hong Kong. She received her university education in Canada, articulated as a certified accountant from 1970 - 1972, and worked from 1972 until 1974. In 1975, she married Dr. Woo and has been a housewife and mother ever since. She has lived in Vancouver ever since her husband began his medical practice in 1977. Since then, she has handled the financial aspects of his practice and has done some office management and administration work as well.

[171] The household income for the Woo family includes Dr. Woo's earnings from his practice, money gifts from his family, some rental income and some interest from investment income. Every year Angela prepares Dr. Woo's tax returns. She identified his Notices of Assessment from 1988 - 2004 showing "total income" between \$198,000 - \$451,462.

[172] Dr. Woo's family is wealthy. In addition to supporting Dr. Woo through medical school, they also send Dr. Woo and Angela substantial monetary gifts. In 2005, his family gave them a gift of \$350,000. When the couple bought their first house in 1997, Dr. Woo's family gave them \$100,000. When they bought a second home in Shaughnessy, his family gave them \$250,000, and then later gave them an additional \$250,000. Dr. Woo's family gave another gift of \$100,000 when Angela bought a lot in Coquitlam even though the lot only cost \$70,000.

[173] Philip visited Angela about twice a year, except in 1997 and 1998 when he visited approximately five times. Stephanie visited Angela approximately once a year until 1997; thereafter she did not visit. Eleanor would also visit about once a year.

[174] The practice that developed was that when Angela's siblings visited, she would pay for all of their meals out and for anything that they purchased with her Visa card. The reasons were that the exchange rates were "extremely high" and so that they "didn't have to bring much Canadian dollars". Angela would keep all of the receipts, put them in separate plastic bags and then store them in boxes. For Philip and Stephanie, after 1988 this practice transpired into a revolving loan. Whatever Angela spent on their behalf would become part of the loan. If the receipts were paid, she would take them out and return them to Philip and/or Stephanie.

- [175] Once the law suit started, Angela took out the receipts and started putting them together to do the bookkeeping and to show what the revolving loan consisted of.
- [176] So far as Eleanor is concerned, Angela looked after her financial affairs in Canada. Those included Eleanor and Stan's purchase of the Pine Crescent Property, the acquisition of a lot in Coquitlam through Olympia, the acquisition of Woolridge Island, and the subsequent construction of a home on the island. In addition, Angela managed some of Eleanor and Stan's term deposits and donations to UBC and the University of Manitoba, where Stan attended.
- [177] The Cheungs provided the money for these donations, but they were made in Dr. Woo's name thus resulting in his receipt of the tax receipts. The idea was that any refund Dr. Woo received would be used to make a further donation. Stan donated over \$1 million to the University of Manitoba and over \$100,000 to UBC, and it is proposed that he will have a room named after him.
- [178] So far as the Pine Crescent Property is concerned, it is on two lots adjacent to Angela and Dr. Woo's property. Dr. Woo wanted a piece of the property to grow peonies on and arranged with the Cheungs to buy one-third of the property. They subsequently learned that the property could not be sub-divided and so the Cheungs decided to refund them their money. Title to the property remains joint, one-third to the Woos and two-thirds to the Cheungs because they did not want to trigger transfer tax through a re-sale of the one-third interest.
- [179] The Woos paid \$667,000 plus adjustments for their one-third interest as the total purchase price was \$2 million.
- [180] Angela acknowledged the agreement whereby Dr. Woo agreed to hold a portion of his interest in trust for Philip for his use of the coach house for \$150,000. She pointed out, however, that the Cheungs did not sign the agreement. Angela's understanding was that in the end, Philip paid \$150,000 to Eleanor for use of the coach house for a ten year period.
- [181] Stephanie had a long-term loan arrangement with Angela so that Stephanie could acquire property in Vancouver "without her contributing a cent".
- [182] The Woos would lend Stephanie whatever was necessary and she would apply for mortgages.
- [183] So far as Andrew was concerned, Angela was involved in the purchase and sale of the West 23rd Avenue Property in which he had a 50% interest with Philip. Andrew had a long-term revolving loan agreement with Angela and Dr. Woo as well.
- [184] The purchase of the West 27th Avenue Property came about following discussions among Angela, Stephanie and Philip while Angela was in Hong Kong in December of 1987 and January of 1988. It was then that they came up with the plan for Stephanie and Philip to acquire properties in Vancouver without the need to put up money. The purchases would

be funded by Angela and Dr. Woo and would be made through Olympia, thus allowing her to earn real estate commission. The idea of the long term revolving loan was to underlie this arrangement.

- [185] The Woos would put up the money. Stephanie and Philip would apply for the mortgages. The property would be rented out and rental receipts or other revenue would be treated as partial repayment of the loan. Any expenses in the property would represent further loans from the Woos. The interest rate would be flexible and Stephanie and Philip would provide the Woos with "reasonable return" when they settled. As for security, the Woos had "the right to put a mortgage on the property at any time in [their] discretion."
- [186] Stephanie and Philip would write off the interest on the mortgage payments to reduce the tax payable on the properties resulting from the rental income. Dr. Woo would not have to pay tax on interest accruing to him until he received it, so the interest charged on the revolving loan was what Stephanie and Philip already declared as interest expense "provided it's reasonable". When they settled what the interest would be, that, together with a "reasonable return" for the Woos would be taxable in Dr. Woo's hands. In that way, Stephanie and Philip were able to save some tax and the Woos were able to defer income. The Woos wanted to defer the income until Dr. Woo retired because it would be taxed at a lower rate than if he had received it in his peak earning years. The property was put in Stephanie's and Philip's names because the Woos already had approximately 4 - 5 investment properties and thus wanted to avoid their property ownership as being treated as a business, which would be 100% taxable. With fewer properties it was more likely to be regarded as an occasional investment and taxed as a capital gain.

WEST 27TH AVE

- [187] With respect to the purchase of the West 27th Avenue Property, there was a \$10,000 deposit that Angela paid for with the Woos' money. It has not been repaid. She also paid the balance of the down payment by cheque for \$187,891.86 from her personal account.
- [188] The handwritten document showing various accounts in the names of Angela's siblings and father was written out by Olympia, perhaps based on something Angela gave Olympia in case she had an accident or something.
- [189] Olympia managed the rental of the West 27th Avenue Property. Angela prepared a document setting forth the cash receipts and cash disbursements for the property from 1988 until 2005. She showed those documents to Philip and Stephanie on a yearly basis either when she went to Hong Kong or when they came to Vancouver. She did not go to Hong Kong between 1997 and 2008, so either Philip would take copies for Stephanie or Angela would report orally to Stephanie.
- [190] She reimbursed Olympia for the expenses she paid for the properties.

[191] If there was a shortfall between the rental income and mortgage payments, Angela would make up the difference with Woo money. For the West 27th Avenue Property, there was a credit of \$23,441.60 due to rental receipts being greater than disbursements. However, taking into account the property purchase price of \$198,034.86, there was a net debt of \$174,593.26, or \$87,296.63 owing by each owner, for the property. She did not receive any money from Stephanie or Philip for the purchase costs of the West 27th Avenue Property or for her payment of the shortfalls that she paid.

2331 WEST 23RD AVENUE

[192] The West 23rd Avenue Property was acquired when Andrew learned of the arrangement between Angela, Stephanie and Philip. He called Angela and asked for "the same deal involving half a property because he didn't want too much risk". Olympia found the West 23rd Avenue Property and it was purchased under Philip's and Andrew's names. Angela spoke with Philip before the purchase and confirmed his willingness to share in the home with Andrew. She confirmed that the transaction would be on the same terms as the West 27th Avenue Property.

[193] Angela paid a deposit of \$20,000 and completion costs of \$197,883.53 for the property. The completion costs were paid by cheque written on her joint account with Dr. Woo. The rental income and disbursements for the property, including mortgage payments, were transacted through a particular account.

[194] Angela prepared the same accounting documents for the West 23rd Avenue Property as she had for the West 27th Avenue Property until it was sold in 2004.

[195] She showed the accounting documents to Philip and Andrew each year.

[196] In connection with the West 23rd Avenue Property, there was an overall deficit between the disbursements, excluding the down payment, and the rental income of \$24,446.06. Angela paid for the shortfalls but received no repayment from either Andrew or Philip. She loaned back the proceeds from the sale of the property to Andrew and Philip when it was sold in 2004. The tenant who had occupied the property wanted to move out, and the property required some maintenance work before new tenants could move in. However, the property was sold because Philip and Andrew wanted to be able to borrow the money from its proceeds at that time.

[197] The money was borrowed on the same terms as before. Olympia listed the property, and Angela decided on the price and accepted the offer that came in.

[198] The net proceeds of sale were \$372,777.61. Angela sent \$180,000 to each of Andrew and Philip as a loan.

[199] Angela did not retain the proceeds of the sale of the West 23rd Avenue Property as repayment of the loan "because if [they] settled it right now, all the income would be taxable in her husband's hands right away."

[200] She identified a wire transfer to Andrew in the sum of \$180,000 dated April 1, 2004, and a wire transfer to Philip on the same date for \$100,000. Philip wanted the transfer in two instalments. He asked Angela to send about \$66,000 to him in the second instalment. With the balance of \$14,000, he repaid some money to Olympia leaving about \$1,000 left over for repayment of the long-term revolving loan. In the meantime, Angela had put the unpaid \$80,000 in a GIC. She identified a wire transfer to Philip in the amount of \$66,000 dated April 13, 2005 as the second instalment of the repayment of the proceeds of sale, after the payout to Olympia and the repayment of the revolving loan.

2257 SICAMOUS AVENUE

[201] Angela purchased the Sicamous Avenue Property in Coquitlam for Philip on December 1, 1989. She paid the deposit of \$10,250 and the balance to complete of \$93,901.05. She identified a cheque for \$93,901.05 drawn on her RBC Account No. 991-633-975, located at the Kerrisdale branch. She also identified a \$1,013 cheque paid to Lum & Company for a property transfer fee; the cheque was drawn on her joint account with Dr. Woo.

[202] Angela let Philip know about the expenses for the Sicamous Avenue Property and summarized them for the period 1989 to 2005. The summary included the purchase price and the expenses, which in total amounted to \$138,298.43. The money used to pay for the expenses came from the Woos. The agreement with respect to repayment was the same as in relation to the other properties.

3235 WEST 13TH AVENUE

[203] The West 13th Avenue Property was bought in 1992. Angela paid a deposit of \$20,000. Two transaction amounts each for \$20,000 were shown on the Woos' line of credit account for June 15, 1992 and June 18, 1992, respectively. They were used as deposits for the purchases of the West 13th Avenue Property and the West 20th Avenue Property, which both took place at around the same time.

[204] There were three other transactions in the statement; these transactions were redacted as they appeared under the \$20,000 transactions. The \$20,000 transactions were given a transaction code of "AUG". The transaction codes for the three redacted transactions were, respectively, "PYT", "CAP", and "COP". The dates for the latter three transactions were redacted as well. It is difficult to assess the weight to assign to the defendant's banking records without knowing what the surrounding transactions would reveal.

THE WEST 20TH PROPERTY

[205] Olympia found the West 20th Avenue Property and the West 13th Avenue Property at approximately the same time. Stephanie had complained about having all of the properties in Philip's name. Therefore, Angela contacted both Stephanie and Philip who agreed to put the West 20th Avenue Property and the West 13th Avenue Property in their respective names. The offer for the West 20th Avenue Property was made on June 10, 1992. It was

drawn up by Olympia and signed by Angela on behalf of Stephanie. There was a deposit of \$20,000. The sale was completed on August 31, 1992 by payment of the balance of the down payment of \$134,420.07. The balance of the purchase price was advanced by the RBC and secured by a mortgage in the amount of \$218,400. The Woos' money was used for both the deposit and the balance of the down payment. The \$134,420.07 was paid by way of a bank draft.

- [206] Angela prepared annual accounts for the West 20th Avenue Property. The Woos' money was used to reimburse Olympia for her expenses and for shortfalls. Angela prepared a cumulative summary of the property's expenses and income from 1992 to 2004. There was a shortfall every year for the property, which in aggregate totalled \$69,945.76. The total net amount paid out by the Woos was \$223,471.92. The only money Angela ever received from Stephanie was the \$40,000 she sent in October 2005 in response to Angela's October 5, 2005 fax.
- [207] The property was sold in 2004 because the tenants were moving out, renovations were required and new tenants had to be found. At that time, Stephanie wanted to borrow money and asked Angela to sell the property to which Angela agreed.
- [208] The net sale proceeds were \$551,967.46 after payment of the mortgage and the non-resident holdback of \$147,990.44. There was a payout of \$247,357.74. \$200,000 of that sum was sent to Stephanie as a "roll-over loan" and the sum of \$57,000 was used as a partial repayment of the long-term revolving loan.
- [209] Regarding the holdback, Angela got a cheque from Revenue Canada via Lum & Company and deposited it into Stephanie's account. There was another holdback cheque that came from Revenue Canada sent to Angela's address. The conversation with Stephanie concerned an income tax refund, not a non-resident's holdback. The tax refund came about a month after the conversation Angela had with Stephanie in October 2005 after Angela sent the October 5, 2005 fax. Angela received a tax refund amounting to \$24,350.06 in November 2005 and deposited it into Stephanie's account, 6181986 on November 3, 2005. She wired Stephanie \$200,000 from that account on May 14, 2004, to her account in Hong Kong.

2854 WEST 31ST AVENUE

- [210] Olympia found the West 31st Avenue Property and Angela called Stephanie to see if she was interested. Angela purchased the property by paying a deposit of \$30,000 using Woo money on July 3, 1993 for which she received a receipt. She identified a statement from her and Dr. Woo's line of credit account for July 1993 that showed a \$30,000 transaction with the code "AUG". Additional transactions in the statement were redacted including: two similar "AUG" transactions, two subsequent POP transactions, a "CAP" transaction, and a "COP" transaction.
- [211] Angela subsequently paid the balance of the down payment on August 13, 1993 in the amount of \$169,714.87 by bank draft from the RBC at Oakridge.

- [212] The statement from her and Dr. Woo's line of credit showed a transaction against the code "AUG" of \$169,174.87 on August 13, 1993. There were subsequent transactions which were redacted, two "POP", one "CAP" one "COP" and another "AUG", all after the initial unredacted transaction.
- [213] Angela prepared yearly summaries of the expenses and income from the West 31st Avenue Property. Up until 1997, she presented the summaries to Stephanie directly when Stephanie visited. Since 1997, she has delivered summaries to Stephanie via Philip or by mail or phone. She reimbursed Olympia for the expenses she incurred in managing the rentals and she paid the other expenses and shortfalls herself using Woo money. The total shortfalls were \$91,211.30. The total disbursements were \$290,327.85. As with the West 13th Avenue Property transaction, it is difficult to assess the weight of the defendant's bank records without knowing what the surrounding transactions would reveal.
- [214] Angela denied ever telling Olympia that Philip and Stephanie had money to buy houses. Neither Stephanie nor Philip provided any gifts to Angela for the work that she did.

WOOLRIDGE ISLAND

- [215] Woolridge Island is owned 60% by the Cheungs, 20% by the Woos and 10% by each of Stephanie and Philip.
- [216] In around 1993 the Cheungs and Woos were discussing the prospect of buying an island and/or a farm. The Woos started looking and in 1994 they found Woolridge Island. They made an offer in 1994 which was rejected and made another offer in 1995 which was accepted.
- [217] Originally, the plan was that the island would be owned 60% by the Cheungs and 40% by the Woos, but then Angela considered including Stephanie and Philip so that each of the Woos and each of Stephanie and Philip would have a 10% interest in the property. Angela identified the agreement involving the six owners dated July 3, 1996. She discussed the agreement with Stephanie and Philip and they agreed to its terms. Angela created a summary of disbursements for Woolridge Island. It identified a down payment of \$50,000 on September 9, 1995, a completion date of December 14, 1995, and a payment on completion of \$868,491.44. Those funds came from the Cheungs and from the Woos. Before looking for the island, Angela had received money from Stan and Eleanor for down payment and property purchase purposes. She did not use any of Philip's or Stephanie's funds for those expenditures.
- [218] The Woos' portion of the funds was paid by "Equity Financing with the Royal Bank of Canada". Angela identified a first mortgage for \$396,514.88 and a second mortgage of \$199,472.88 as part of that financing. There was never a mortgage on the island. The mortgages were on the Woos' home. There were also legal fees of \$1,948.34 related to those mortgages. There were additional amounts for water leases, construction costs, legal fees and settlement fees in relation to construction, as well as transportation costs, furniture

costs and contingency funds. These when added together with the purchase costs totalled \$2 million. In the result, Philip and Stephanie each owed \$200,000 for their respective 10% shares and a further \$85,000 to cover their proportionate share of the RBC mortgage interest. The \$85,000 mortgage interest relates to the interest paid from 1985 to 2007 on the RBC mortgage that was taken out to finance the Woos', Stephanie's and Philip's shares in Woolridge Island. The total interest paid was \$299,863.16. Neither Philip nor Stephanie has paid any amount for Woolridge Island even though both agreed to pay for their share of all of the costs.

THE NANTON PROPERTY

- [219] The Nanton Avenue Property was purchased as a result of Mr. Ng and Mrs. To's concern about the changeover in 1997. Angela and Philip, who were in Vancouver, were looking for a property in February 1988. They eventually found the Nanton Avenue Property and entered into a contract of purchase and sale on March 24, 1988 with completion on June 10, 1988. Title was registered jointly in the names of Stephanie and Philip on their parents' instructions. According to Angela, it is a common thing in Hong Kong for people to use nominee names to own property. Her parents supplied the money to purchase the property, including the \$15,000 that Angela used to pay for the deposit. The account was in Angela's name as per her father's request even though the money came from him. Her father gave Angela the \$340,000 for the purchase of the property and instructed her to pay her mother 8% per year. Angela was aware of the Declaration of Trust because Philip brought it and showed it to her during one of his visits.
- [220] Angela wrote her parents on March 25, 1988, reporting that she had bought the Nanton Avenue Property for them and telling them that she had opened an account in her name to pay for the home. In that letter, Angela also asked her father to remit money to that account. The parents were the owners of the Nanton Avenue Property. Olympia managed it. The rental income went into an account opened for that purpose. Surplus funds went to their mother. Angela reported the financial accounting of the Nanton Avenue Property to her parents in a manner similar to how she reported the accounting to Philip and Stephanie for the other properties. She never heard that her father had given the Nanton Avenue Property to Philip and Stephanie as a gift.
- [221] Mr. Ng travelled to Vancouver for surgery to remove a tumour in May 1997. He arrived on May 8, 1997 and left July 25, 1997.
- [222] He stayed at Eleanor's home on Pine Crescent after he was released from hospital. He was very weak so Angela hired a personal trainer to help him in his recovery.
- [223] Angela had no knowledge of a Canada Trust account that Philip had in Vancouver between 1985 and 1988 and denied that he transferred any money to her by wire transfer during that period.

- [224] Angela identified the letter she faxed to Philip on October 3, 2005 asking for payment of the deficit on the West 13th Avenue Property.
- [225] She spoke to Philip in about September 2005. Angela was worried about the dispute arising in Hong Kong and asked Philip to start his repayment. That was the time he first claimed that he had given her money. She subsequently sent the letter asking for repayment and for "details of the money that he claimed [he] had sent [her]."
- [226] As far as Stephanie is concerned, Angela never received a wire transfer of \$108,000 on October 5, 1988. Stephanie never sent any large amounts of money by wire transfer apart from the \$40,000 she sent after receipt of the October 2005 demand. Stephanie never provided \$3,000 in cash for the properties in April 1989.
- [227] The wire transfer dated October 15, 1990 came from Angela's father. He sent the funds to reimburse Angela and to send money for his two sisters who lived in Vancouver. On February 13, 1992 a wire transfer for \$6,079.03 was sent to her from Eleanor as reimbursement for expenses incurred on her behalf. She identified a used envelope on which she listed various amounts corresponding to certain dates in 1990 and 1991, totalling \$6,079.03 as her contemporary recording of Eleanor's expenses. The dates began on July 30, 1990 and ended on October 8, 1991. At the bottom there is a notation "received from [Eleanor] 1992 February 13 \$6,079.03 - \$10 = \$6,069.03". The \$10 deduction was for bank charges. Angela made the document shortly before she received the wire transfer from Eleanor. The date stamp on the front of the envelope was December 18, 1990.
- [228] Angela identified various invoices, receipts and notations relating to the claimed expenses noted on the back of the envelope and corresponding to the dates noted.
- [229] The figure of \$6,079.03 corresponds to \$40,000 (HK) One of the claimed expenses was supported by receipts for the purchase of food items. There was a bill for \$42.89 paid in cash on July 30, 1990 at Meridian Village Safeway for 18 bags of "Ruffles" chips, some fruit and soda.
- [230] There are several anomalies among the expenses claimed. The first expense of \$515.85 on July 30, 1990 was said to be the Canadian equivalent of \$449.57 (U.S.) that was paid for bedding and sheets and a small parcel delivery purchased from the Bon Marche during a one day trip to Bellingham on July 30, 1990. There were other expenses claimed by Angela from Eleanor arising from that same trip including: \$42.89 for a large quantity of Ruffles chips, some soda and fruit from Meridian Safeway; \$1,820.49 and \$123.76 spent on bedding and a small parcel delivery from the Bon Marche; and \$134.18 (unreceipted) for meals, which Angela identified as partially in support of a wire transfer from Eleanor on February 20, 1990 in the amount of \$28,321.32 (U.S.). The balance of about \$26,200 was, according to Angela, deposited in Eleanor's U.S. dollar term deposit account. Those expenditures were noted by Angela on a document which she titled "1990 (Eleanor's) expenses in U.S. dollars."

- [231] Angela did not explain why one of Eleanor's 1990 expenses in U.S. dollars was converted into Canadian dollars and made part of a series of expenditures from 1990 and 1991. Those expenditures totalled \$6,079.03, which is exactly equivalent to \$40,000 (HK), which is the same amount that Angela received one week earlier on February 13, 1992 from Stephanie.
- [232] The other anomaly is that Angela counted one of Eleanor's expenses, a Maynard's invoice for \$329.40, twice in reaching the total of \$6,079.03, which she claimed the \$40,000 (HK) was sent to reimburse.
- [233] Angela claimed that although the money may have been sent by Stephanie, it was ultimately from Eleanor in payment for her expenses.

THE \$20,000 WIRE TRANSFER SENT ON JUNE 12, 1992

- [234] The wire transfer for \$20,000 sent on June 12, 1992 was not from Stephanie. It was sent for their father's and mother's medical expenses in 1992. Angela produced a document that showed various expenses related to her parents' medical treatments and a restaurant expense for \$1,488.49. The total amount claimed as expenses relating to her parents was \$15,222.78, and a note at the bottom of the document read as follows:

Remittance received on June 12, 1992 - \$20,000 less \$10.00 bank charges. Difference to cover miscellaneous expenses incurred from April to June.

THE \$10,000 WIRE TRANSFER SENT ON SEPTEMBER 22, 1992

- [235] The wire transfer sent on September 22, 1992 for \$10,000 was a reimbursement from Eleanor for expenses Angela paid for on her behalf. Angela produced an envelope on the front of which had a date stamp of June 18, 1992. The back of the envelope had a list prepared by Angela of various expenses incurred by Eleanor from June and July totalling \$9,994. At the bottom of the list of expenses, Angela noted as follows:

Received September 22, 1992 \$10,000 - \$10 bank charge = \$9,990

- [236] Angela produced an invoice dated September 8, 1992 from Studio A Photo Ltd. for \$59.89 for Eleanor Cheung, that related to a claimed expense of \$60 on her list of expenses for that date on the back of the envelope. The other expenses claimed had no corresponding invoice or receipts.

THE \$190,000 WIRE TRANSFER SENT ON JULY 20, 1993

- [237] The \$190,000 wire transfer was sent on July 20, 1993.
- [238] Angela denied receiving \$190,000 from Stephanie on July 20, 1993 for the purchase of the West 31st Avenue Property. The wire transfer she received in that amount was from Eleanor for the purchase of an island or a farm - "an advance payment in case the property came up we can make the deposit right away."

THE \$20,000 WIRE TRANSFER SENT ON SEPTEMBER 3, 1993

[239] The \$20,000 wire transfer sent on September 3, 1993 was sent by Eleanor to reimburse Angela for her expenses. Angela wrote a list of the expenses on the back of an undated business envelope and noted on it that she received the \$20,000 minus the \$10 wire transfer fee in payment of the expenses. She produced a note dated August 28, 1993 on the back of an RBC deposit slip showing that she loaned Eleanor \$10,000 and that the four daughters shared in the purchase of a birthday gift for their mother, each agreeing to pay \$1,122. Angela claimed that the note provided proof of Eleanor's expenses for which the \$20,000 transfer was paid. She also produced a note reflecting that she paid \$1,000 on Eleanor's behalf on August 12, 1993, and an invoice for \$519.80 dated January 14, 1993 from Studio A Photo Ltd. to Eleanor Cheung, which was also reflected in the list of expenses for which the \$20,000 was paid. A second invoice from Studio A Photo Ltd. for \$1,666.12 paid on May 27, 1993 also formed part of the claimed expenses.

THE \$50,000 WIRE TRANSFER SENT ON DECEMBER 20, 1995

[240] The \$50,000 wire transfer sent on December 20, 1995 was from Eleanor, who sent it in order to make a donation to the University of Manitoba. Angela produced a receipt made out to Dr. Young Chi Woo for \$50,000 dated July 5, 1996. She had written on it "to Arnold Naimark President of U of M", and beside her husband's name on the receipt she wrote "for Eleanor's husband, an alumnus of U of M". She did not remember when she wrote the first notation. The second notation was made when she gave the document to her counsel. The receipt was in Dr. Woo's name because he wrote the cheque.

THE \$50,000 WIRE TRANSFER ON APRIL 29, 1996

[241] The \$50,000 wire transfer dated April 29, 1996 was from Eleanor, not Stephanie. Angela produced an envelope on which she had written the symbol for Eleanor and the words "Liberal Party (96/05/13)" and "Burnaby Hospital (96/04/28)". Beside the notation "Liberal Party", she wrote "\$30,000" and "for property tax to be saved" and "cheque given to Gordon Campbell's sister". Beside the notation "Burnaby Hospital", she wrote "\$20,000" and "for father-in-law treatment in BH". Angela wrote the explanation of what the amounts were for when she gave the envelope to her counsel.

[242] When she originally testified in chief, Angela explained the handwriting on the envelope. She testified as follows:

A. ...Like, in (sic) this envelope, there are handwritings during different periods.

Q. Okay. So maybe explain what -

A. Yeah, so the scribbling of "Liberal Party, 30,000" and "Burnaby Hospital, 20,000" was when Eleanor gave me the instruction about the amount to be donated. And then when I received from Eleanor at the bottom, that's received from 2, Eleanor, 1996, April 29th, 50,000, minus ten bank

charges. Total 49,990. So when this was sent, the money received, my husband have already given the cheque to the hospital on April the 28th, and after receiving the money, I gave a cheque to Gordon Campbell's sister for the donation to the Liberal Party. And then on the right side with darker pencil is when I gave the stuff to you to let you know what are they for - what they are for.

[243] The envelope with the notes on the back of it was a Government of British Columbia envelope. The front of the envelope bore the words "Rural Property Tax Notice Enclosed". It had a postage paid stamp on it which reflected no date, but in the bottom left hand corner, it contained the printed notation "RD 43 (2007/4)". The front of the envelope also bore a British Columbia insignia with the slogan "British Columbia, The Best Place on Earth".

[244] Angela identified an official receipt for income tax purposes received from the Hospital's Foundation of British Columbia in the amount of \$20,000 issued May 28, 1996. The receipt was made out to Dr. Woo. Angela also identified a receipt for a \$30,000 contribution (received May 13, 1996) to the B.C. Liberal Party which was issued on May 20, 1996. It too was made out in Dr. Woo's name. The receipts were made out in Dr. Woo's name because he "was the one who wrote the cheque."

[245] Subsequently, after the trial concluded, it was brought to counsel's attention that the insignia and slogan on the envelope bearing the words "Rural Property Tax Notice Enclosed" were not in use by the government of British Columbia until approximately 2006, ten years after the events occurred, which the notes on the envelope referenced. Counsel were asked to address whether the court could take judicial notice of that fact and in the result, after submissions, I concluded I could take judicial notice and further concluded on the basis of additional evidence which I admitted, that the envelope which the notes were written on, did not come into existence until 2007.

[246] In light of that finding, counsel for the defendants sought leave to reopen their case to call additional evidence to address the issue. I granted that application and on February 3, 2011, the defendants called Catherine Vertesi, Ms. Vertesi's brother is Gordon Campbell, who in 1996 was the leader of the opposition Liberal Party. Ms. Vertesi confirmed that she received a cheque from Angela, said to be from Stan and Eleanor Chung in the amount of \$30,000 as a donation to the Liberal Party, which she handed over to the appropriate person. She testified that that event occurred sometime in 1996 after she returned home from Hong Kong in March of that year.

[247] Angela was also re-called to testify about the notes on the envelope.

[248] Her evidence was to the effect that she made a series of three or four notes on different scraps of paper as events transpired, relating to her receipt of the wire transfer for \$50,000. First, after her conversation with Eleanor, when Eleanor instructed her to donate \$30,000 to the Liberal Party, and \$20,000 to Burnaby Hospital, then, when she received the money and again also when she wrote the cheques. Angela testified she used shoe boxes or Kleenex boxes to store the scraps of paper which she kept in one of four desks she was using at the time for her various activities.

- [249] She testified she delivered the \$30,000 cheque to Ms. Vertesi after she wrote it. She got the two tax receipts for the donations and put them on her desk as well.
- [250] She did not deal with the notes or tax receipts again until eleven years later. She testified it was after the law suit commenced, in 2007, and she had just finished the summary of funds she claimed were owed to her by Stephanie and Philip and started tidying up. She testified she came across the scraps of paper and the donation receipts and she "knew (she) needed to write a report for Eleanor so (she) copied the notes" from the scraps of paper onto the back of the property tax envelope, which she had just received. She put the receipts into the envelope and took them over to Eleanor's house and left them there. She threw away the original scraps of paper because they were of no further use.
- [251] She testified it wasn't until 2009 when she received copies of the wire transfers Stephanie had produced and was relying on as evidence of her contributions towards the Vancouver property purchases that Angela went back to Eleanor's house "and got the supporting documents" - the envelope and the tax receipts - including the envelope and the tax receipts. After she found them, she wrote the notes to her lawyer explaining what the wire transfers and donations were all about.
- [252] She testified when she initially testified about the notes on the envelope she "was focussing on the actual information on the scrap paper, not the summary (she) wrote on the envelope in 2007." She "was not differentiating in (her) mind."
- [253] In cross-examination she acknowledged that the other self-generated notes she presented, were presented as contemporaneous and were not based on any earlier notes. She agreed her present explanation was advanced after it came to light that the envelope the notes were written on was not in existence when the events to which they relate occurred, but she denied manufacturing the notes to explain away the wire transfers produced by Stephanie. She said it was not her intention to suggest the writing on the envelope was prepared in 1996 - she was referring to the actual information on the scraps of paper, not the envelope in her earlier evidence.

THE \$45,000 WIRE TRANSFER SENT ON JUNE 26, 1997

- [254] The \$45,000 wire transfer sent on June 26, 1997 was from Eleanor for the construction of the house on Woolridge Island.

THE \$70,000 WIRE TRANSFER SENT ON SEPTEMBER 5, 1997

- [255] The \$70,000 wire transfer sent to Angela on September 5, 1997 was from Eleanor, not Stephanie. It was sent for the construction of the house on Woolridge Island.

THE \$19,000 CREDIT IN 2000

[256] Angela denied asking Stephanie to provide her with \$19,000 in 2000 or to give their mother money on Angela's behalf. Angela further denied asking her mother to buy stocks on her behalf using Stephanie's money.

THE \$40,000 WIRE TRANSFER SENT ON OCTOBER 6, 2005

[257] Angela agreed that Stephanie did send her a wire transfer in the amount of \$40,000 on October 6, 2005. That wire transfer was in response to the fax she sent to Stephanie dated October 5, 2005. In the fax, Angela asked Stephanie to send her "the detail of the money [Stephanie had] sent to [Angela] for the purchase of [Stephanie's] rental properties" in order to allow Angela to "verify [her] figures before [Angela sent Stephanie] a detail summary". She explained that in "an earlier conversation in September" when Angela raised the matter of the money Stephanie owed her, Stephanie said that she had sent Angela money already.

PERSONAL EXPENSES OF AND LOANS TO PHILIP AND STEPHANIE

[258] Angela prepared a document sometime after March 30, 2007 showing the disbursements that she and Dr. Woo made for Philip and Stephanie from April 1, 1988 to March 30, 2007. The document reads as follows:

SUMMARY OF INDIVIDUAL DISBURSEMENTS (RECEIPTS) BY YOUNG CHI WOO/KAY CHEE NG

FOR: PHILIP KWOK PIU NG & STEPHANIE OI CHE NG

FROM APRIL 1998 TO 30 MARCH 2007

PHILIP KWOK PIU NG

STEPHANIE OI CHE NG

PERSONAL LOANS

\$126,761.98

\$0.00

PERSONAL EXPENSES

\$63,657.91

\$15,690.03

REPAYMENT FROM SALE OF PROPERTY

(1,430.00)

(57,000.00)

REMITTANCES

0.00

(40,000.00)

INCOME TAX REFUND

(37,750.42)

(92,520.64)

2% CASHBACK ON CANADA TRUST MORTGAGE RENEWAL

(1,346.31)

(1,346.31)

TOTAL - to be added to or deducted from disbursements for properties

\$149,893.16

(\$175,176.92)

COMBINED TOTAL (\$25,283.76)

[259] The \$126,761.98 in personal loans to Philip was set out in Exhibit 27. It showed that on December 26, 1994 Philip borrowed \$15,000 from Angela and that that amount was part of the long-term revolving loan. Philip had testified that that amount was repayment for his purchase of Royal Doulton china for Angela. Angela denied that Philip bought her china. She identified a wire transfer for \$15,000, together with \$34 in bank charges, dated November 26, 1994 that she related to that loan.

[260] The next amount comprising the total was the sum of \$10,026.50, which Philip had testified was repayment for the purchase of a Rolex watch for Dr. Woo. Angela said it was money sent to Philip as a personal loan. She denied that Philip bought her husband a Rolex watch on her behalf or otherwise. She identified a wire transfer for \$10,000, plus \$26.50 in bank charges, dated March 29, 1997 that reflected that loan.

[261] The next item was \$20,000 sent on June 17, 1999. It was sent to Philip as a personal loan. It was not, as Philip had testified, repayment to him for purchase of rosewood furniture. Angela denied that Philip purchased rosewood furniture for her or for Dr. Woo.

[262] Angela identified an undated wire transfer to Philip for \$20,000 with bank charges of \$41.50. She related that to another personal loan of \$20,000 made on December 1, 1999 that too had formed part of the total revolving loan amount of \$126,761.98. She denied that the December 1, 1999 remittance had anything to do with repayment for furniture that Philip had bought them.

- [263] On May 14, 2003 Angela sent Philip \$10,000 as a personal loan. The wire transfer included \$45.00 for bank charges. On November 3, 2003 she sent \$26,000, which, with bank charges for the wire transfer, amounted to \$26,050. It was another personal loan that formed part of the revolving loan. These two amounts were not, as Philip claimed, Philip's money that she was returning to him at his request.
- [264] On March 21, 2001 she sent Philip \$10,000 in U.S. dollars, plus \$25.50 in bank charges, as a loan (\$15,523.48 CDN) because he had asked for U.S. dollars. She denied that it was, as Philip claimed, a return of his money at his request.
- [265] On February 7, 2003 Angela gave Philip a cheque drawn on Canada Trust for \$10,000 as a personal loan. Philip was in Vancouver for Chinese New Year at that time, so it was unnecessary to wire transfer the funds to him.
- [266] In total, the amount of the personal loans advanced to Philip, according to Angela, amounted to \$126,761.98, and Philip has paid none of it back.
- [267] In addition, Angela paid a number of personal expenses on behalf of Philip totalling \$63,657.91. Those expenses included \$1,689.94 for a Canadian government immigration publication and \$21,215.69 in travelling expenses for airline tickets and tours that Angela had arranged. Angela denied that their father would pay for everyone's trip expenses when he accompanied them. She also made payments to Philip's Visa card amounting to \$8,248.20. She referred to two Visa bills in Philip's name, the first amounting to \$5,021.17 and the second amounting to \$1,623.40, which she claimed she paid, along with other bills, on Philip's behalf. Angela submitted that these expenses were part of the long-term revolving loan.
- [268] Angela also paid what she described as miscellaneous expenses for Philip. These expenses were set out by Angela in a document titled "Miscellaneous Expenses Paid by Young Chi Woo/Kay Chee Ng". The expenses consisted of association fees, legal fees, medical fees and postage, all from 1990 to 2007, and a repayment of \$31,831 to Eleanor on May 18, 1998. In total, the miscellaneous payments totalled \$32,504.08.
- [269] In connection to the repayment to Eleanor, Angela referred to a handwritten document dated May 18, 1998. Part of the note was written by Philip in both Chinese and English and part by Angela in English alone. The note stated "total repayment to Eleanor by Philip of \$31,831".

CROSS-EXAMINATION OF ANGELA

- [270] In Angela's cross-examination, counsel for the plaintiffs focussed on some inconsistencies and improbabilities in her evidence. The plaintiffs pointed to the differences between how Philip and Stephanie, on one side, and Angela, on the other side, described the events leading up to Philip's and Stephanie's decision to invest in Vancouver real estate. Philip and Stephanie stated that they decided to invest in the various properties as a result of the

impending take-over. Angela submitted that the property arrangements were created due to her desire to help Philip and Stephanie get established and enhance their status among their friends. Her evidence about the genesis of the plan differed between her discovery and her evidence at trial. On discovery she said that the plan was formed in the course of several discussions that took place in Hong Kong and Vancouver. At trial, she said it crystallized while she was in Hong Kong from December 1987 to January 1988.

- [271] Plaintiffs' counsel pointed out incongruities in Angela's evidence. For example, Angela submitted that Stephanie and Philip could use the interest from their revolving loan against any rental income earned. However, she also asserted that the interest was only payable when the properties were sold, which was also the time when the interest rate was determined.
- [272] Angela agreed on cross-examination that she was not a tax expert. However, she nonetheless submitted that the various properties were put in Stephanie's and Philip's names in order to avoid having the proceeds of sale from the properties being construed as business income of Angela and Dr. Woo. Angela claimed that this arrangement was necessary since she and Dr. Woo owned other properties as well. In cross-examination, the legitimacy of her reasoning was questioned.
- [273] Angela was cross-examined about filing Stephanie's and Philip's tax returns, and it was suggested that her failure to acknowledge that she had signed their names was illustrative of her professional ethics.
- [274] Angela was cross-examined about the composition of the receipts she claimed made up the \$6,079.03 that Eleanor owed her, which she offered as an explanation for the \$40,000 (HK) wire transferred on February 13, 1992. Plaintiffs' counsel suggested that it was a suspicious coincidence that the amount of the alleged expenses equalled exactly \$40,000 (HK). Her explanation was particularly suspicious when one considered the fact that Angela included only one of a number of receipts from a shopping trip to Bellingham in that total, while designating the other bills from that same trip as expenses that were reimbursed by way of a separate wire transfer in American funds.
- [275] The plaintiffs questioned why there would be a need for Stephanie to send money to Angela on Eleanor's behalf given that Eleanor acknowledged that she had funds in Vancouver and that Angela had access to those funds.
- [276] Angela was cross-examined as to her assertion that the \$190,000 sent at around the time of the purchase of the West 31st Avenue Property (being 40% of the purchase price qualifying Stephanie for a mortgage) was money from Eleanor for a future non-specific purchase of recreational property. She was questioned further about the plausibility of her evidence that Stan and Eleanor sent her funds for donations, but they were made in Dr. Woo's name because he wrote the cheques.

- [277] She was questioned about the plausibility of a wire transfer from her father for \$531,000 that she characterized as a gift to Dr. Woo for his medical attention to her father and to her mother. Angela was questioned about the cheque she claimed to have written for \$250,000 to secure the Cheung's Pine Crescent Property and her inability to produce any record of the cheque or account statements. She was questioned about the coincidence of her evidence that she "loaned" both Philip and Stephanie funds from the property that she sold on their respective behalves. It was suggested by the plaintiffs that the monies were paid, not as loans, but rather as payments of the proceeds of sale to the property owners who were entitled to them.
- [278] The plaintiffs' cross-examination included Angela's dealings with the tax refund and the non-residential holdback arising from the sale of Stephanie's West 20th Avenue Property. It was suggested that Angela was "evasive" in what she communicated to Stephanie about those amounts and that she intended to keep those funds for herself and eventually did.

EVIDENCE OF ELEANOR

- [279] Eleanor's testimony was to the effect that she and Stephanie were very close and that Stephanie handled many of her finances including some of her investments in Hong Kong. Eleanor stated that Stephanie would send wire transfers to Angela on Eleanor's behalf. Eleanor said that she would write Stephanie a cheque, give her cash, or ask her to take money from her company banking accounts, for which Stephanie had signing authority, to make these transfers.
- [280] She said that she and she alone bought and sold Cornhill and that Stephanie owned no part of it and thus made no money from its sale. Stephanie was the nominal director of Eleanor's investment company, Sun Union.
- [281] She testified that her father was the owner of all of the companies including Tony Ng and Company and Vercos. She said that Stephanie worked for Vercos, but did not own it. Eleanor said that Vercos did some work for her and for her companies.
- [282] Eleanor explained that when she went to Vancouver, Angela would pay for things and would keep track of all expenses. Angela would tell Eleanor what she owed her and then Eleanor would get Stephanie to reimburse Angela by way of wire transfers. She repeated that she would give Stephanie a cheque or cash and then would ask her to send a wire transfer to Angela.
- [283] She was shown about 9 wire transfers sent by Stephanie and said that there would have been many more than 9 that she sent to Angela over the years. She identified certain invoices as being for items that belonged to her and were purchased for her by Angela. Eleanor submitted that she repaid Angela for these items by having Stephanie send her money through wire transfers.

- [284] Angela used Eleanor and Stan's money to make donations. According to Eleanor, the donations were made by Dr. Woo at the suggestion of the universities (the University of Manitoba and the University of British Columbia) because "the money from the tax refund would go for further donations."
- [285] She and her husband donated over \$1million to the University of Manitoba, and some, but not all, of the donations were made in Dr. Woo's name. She recalled a \$50,000 donation to the University of Manitoba in 1996 that she had asked Stephanie to wire the funds to Angela for. She remembered that donation because the president of the University of Manitoba was in Hong Kong and met with her and her husband, who agreed to the \$50,000 to support a particular project.
- [286] Eleanor also remembered a \$20,000 donation that they made to the Burnaby Hospital Foundation and a \$30,000 donation to the Liberal party. She asked Stephanie to wire the funds to Angela for those donations.
- [287] She agreed that Angela and Dr. Woo owned about one-third of the Pine Crescent Property purchased by her and her husband. However, when they found out that they couldn't subdivide the property, they paid Angela back the money that she and Dr. Woo had originally contributed.
- [288] She agreed that Philip paid \$150,000 for use of the coach house on the property for a ten year period.
- [289] She said that she sent some money to Angela in "around 1993 to be ready when a good deal came up". It was \$190,000, which she remembered because it was "a lucky number in Chinese". She was shown the wire transfer document and asserted that \$181,533 of the \$190,000 came from a fixed deposit that she had and that the remainder was by way of cheque.
- [290] Eleanor had enough money in Canada to pay for her share in Woolridge Island when it was purchased. She later asked Stephanie to wire transfer money to Angela to pay for the construction of the house on Woolridge Island. She remembered sending \$70,000 and \$45,000 towards that cost.
- [291] In cross-examination, she said that she had about four accounts in Vancouver that Angela looked after. She gave Angela a power of attorney.
- [292] She testified that she sent the \$6,079.03 to repay Angela and once she repaid Angela, Angela gave her the receipts that she left in the Pine Crescent Property.
- [293] She also sent the \$28,321.32 in part to pay off the expenses incurred during the trip to Bellingham and in part to put into her U.S. account in Vancouver.

- [294] She was shown a wire transfer without any corresponding invoices and was unable to identify what it was for. She couldn't recall if she sent any other funds towards the purchase of Woolridge Island in "lucky amounts".
- [295] Eleanor said that Stephanie had signing authority for her accounts in Hong Kong and thus could have wire transferred money for her directly from those accounts. However, Eleanor said that instead she would take money out from her account and transfer that money into Stephanie's account, which would then be wired to Angela by Stephanie. She did not claim the accounts from which the funds were wire-transferred to be hers.

DR. WOO'S EVIDENCE

- [296] Dr. Woo testified generally in support of Angela's version of the events. He detailed a number of significant sums of money that were sent to him and Angela from his family who were very wealthy company owners in Taipei. They received in total something in the order of \$1.3million over a period up to and including 2005. He testified that he talked with Angela about lending money as an investment to Philip and Stephanie. He explained that the money would be used to purchase houses that when sold, would result in him receiving his investment plus more back. He testified that he didn't know much about the details.
- [297] He testified that his brother-in-law, Stan paid the money back for the Pine Crescent Property that they had originally provided to purchase their one-third share.
- [298] He said that Stan donated \$20,000 to Burnaby Hospital because he had treated Stan's father there and as a result, Stan's father wanted to give him a gift. Dr. Woo suggested instead that it be donated to the hospital. He testified that he did some surgery on his father-in-law in 1992 and also provided necessary medical attention to his mother-in-law. He testified that in 1994 Angela told him that her father had sent about a half-million dollars as gratitude for the work that he had done to assist them in their health issues. He testified that he performed a second operation in 1997 on a growth on his father-in-law.
- [299] He explained that the mortgage placed on the Nanton Avenue Property was put in his name in 2005 because his mother-in-law told him that Philip would not repay money that he owed. She requested the mortgage to secure his indebtedness.
- [300] Dr. Woo testified that in 2005 he and Angela learned some shocking things that occurred in Hong Kong involving Philip and Stephanie. Because Angela and Dr. Woo had loaned Philip and Stephanie money, they were concerned about getting the money back and were worried that Philip and Stephanie might sell the houses in their names. Therefore, Angela and Dr. Woo put mortgages on those houses to protect themselves.
- [301] In cross-examination, he agreed that the arrangement with Stephanie and Philip was that he would get his money back plus an additional amount when the houses were sold. He said he didn't know how much more he would get at the time.

- [302] He was unaware that \$1.7 million was being claimed as the amount loaned out by him and Angela. He understood it was a large amount, but didn't know exactly how much it was. He was shown his income tax records from 1988 to 2004. He believed that they were accurate but also said that Angela told him she was doing some income splitting so the tax records may not have reflected all of their disposable income. He agreed that in 1989 he took out a mortgage of \$500,000, which required him to pay approximately \$5,200 per month in mortgage payments. However, he did not agree that he had an insufficient cash flow to make the loans as he claimed he had.
- [303] He agreed that on December 13, 1995 Angela and he increased the mortgage on the property from \$500,000 to \$700,000. He said that it was explained to him by Angela that the increase was for "equity financing".

ANDREW AND JEREMY'S EVIDENCE

- [304] Both Andrew and Jeremy testified for the defendants. Andrew contradicted Philip's evidence that they had no discussions about the West 23rd Avenue Property. Andrew confirmed that Angela loaned him the money for his contribution to the down payment when that property was purchased and that the payment to him from the proceeds of sale was indeed, a further loan.
- [305] Jeremy contradicted Stephanie's characterization of herself as the owner of Vercos and the "boss" of her father. He said it was the other way around and Stephanie did what her father told her to do.

THE POSITIONS OF THE PARTIES

- [306] It is the plaintiffs' contention that if the court accepts their version of the events, they are entitled to the following relief:
- (a) a declaration that the mortgages are of no force and effect;
 - (b) a direction to the Registrar of Land Titles to discharge the mortgages and the certificates of pending litigation;
 - (c) damages against the defendants in the amount of \$605,487.91;
 - (d) a permanent injunction restraining the defendants from dealing with any of the property in issue or any of the assets of the plaintiffs;
 - (e) interest in accordance with the Court Order Interest Act; and
 - (f) costs.
- [307] For their part, the Woo defendants (plaintiffs by counter-claim) seek the following order:
- (i) a declaration that the Plaintiffs hold the Rental Properties in constructive trust for the Woo Defendants to the extent of

- a. the Woo Defendants' contributions as set out in paragraph 246 to each of the remaining Rental Properties plus first-mortgage rate interest, or in the alternative, court order interest, and
 - b. a 50% to 75% portion of the net appreciation in value of each of the Rental Properties;
- (ii) an order that the remaining Rental Properties be sold pursuant to the request in the Woo Defendants' Counterclaim for "such further and other relief as to this honourable Court may seem just"; and
- (iii) an order that an accounting of the net appreciation in value of the Rental Properties, including W 23rd and W 20th, be carried out subsequent to the sale of the remaining Rental Properties to determine the value of the parties' respective interests, including any surpluses accumulated on the Rental Properties from 2006 to the time of sale;
- (iv) an order that the Plaintiffs each pay the Woo Defendants \$285,675.19 for their 10% interest in Woolridge with court ordered interest;
- (v) an order that Philip pay the Woo Defendants \$149,893.16 for personal loans made to him by the Woo Defendants, with court ordered interest;
- (vi) an order that Stephanie pay the Woo Defendants \$15,690.03 for personal expenses paid by the Woo Defendants on her behalf, with court ordered interest;
- (vii) a declaration that the Plaintiffs hold Nanton in trust for Father's estate and Mother, or, in the alternative, for Father's estate alone;
- (viii) an order that an accounting of any surpluses accumulated on the Nanton since 2006 be carried out and paid to the Father's estate and Mother, or, in the alternative, for Father's estate alone.
- [308] The premise underlying the plaintiffs' claim for relief is that between the two of them, they remitted in total \$1,612,616.48 to Angela, \$862,616.48 from Stephanie and \$750,000 from Philip, between 1985 and 2005. They submit that after accounting for the funds paid to Angela by way of rental income and proceeds of sale and the funds paid by Angela for property expenses, including the distribution to Stephanie and Philip of proceeds of sale for the West 23rd and West 20th Avenue properties, there is an outstanding balance of \$605,487.91 owing to them.
- [309] The premise of the defendants on the other hand is that neither Stephanie nor Philip paid any money to Angela in furtherance of the rental property acquisition plan. The defendants say that the plaintiffs were nominee owners only, whose interest in the property was gained through permitting Angela and Dr. Woo to use their names as legal owners to avoid and/or defer Dr. Woo's and Angela's tax liability. The defendants further contend that the plaintiffs' interest is subject to repayment of what Angela and Dr. Woo put towards the properties with interest to be determined when the properties are sold, in addition to a reasonable profit to Dr. Woo and to Angela.

[310] The defendants also say that the plaintiffs paid nothing towards the acquisition of or construction on Woolridge Island and that they borrowed personal funds that were not repaid.

[311] The plaintiffs disagree. They say that they contributed towards the acquisition of and construction on Woolridge Island and that the monies identified by Angela as being paid to them either were paid back or were a return of monies held in the plaintiffs' Canadian bank accounts.

[312] Insofar as the rental properties are concerned, the defendants submit that after a final accounting for each property, the plaintiffs (and Andrew) owe the following amounts for their respective properties:

1. The West 27th Avenue Property

Stephanie - \$87,296.63

Philip - \$87,296.63

2. The West 23rd Avenue Property

Philip - \$115,524.49

Andrew - \$115,524.49

3. The Sicamous Avenue Property

Philip - \$138,298.43

4. The West 13th Avenue Property

Philip - \$286,376.09

5. The West 20th Avenue Property

Stephanie - \$223,569.43

6. The West 31st Avenue Property

Stephanie - \$290,327.85

[313] So far as Woolridge Island is concerned, the defendants claim that each of the plaintiffs owe \$285,675.19 on the following basis:

Purchase of Island:

Down payment

\$50,000.00

Completion:

\$868,491.44

Payment to agent:

\$205.00

Payment of legal fees:

\$985.64

\$527.20

\$435.50

Construction of building:

Fiscus

\$489,496.40

Direct payment to workers

\$11,978.85

Settlement with Fiscus

\$53,808.00

Legal fees for settlement

\$1,209.55

Transportation costs:

\$7,036.65

Boats:

\$87,686.44

Furniture:

\$6,801.99

[314] In total, therefore, before any notional adjustment for the sale of the rental properties, the defendants say that the plaintiffs' indebtedness to them for the various properties is as follows:

1. Stephanie - \$886,869.10;
2. Philip - \$655,170.83

[315] In addition, the defendants claim that the plaintiffs are indebted to them for personal loans as follows:

Philip - \$149,893.60

Stephanie - \$15,690.03

- [316] In relation to the Nanton Avenue Property, the plaintiffs contend that the Declaration of Trust that they signed lacked the necessary elements of certainty of objects and certainty of subject matter. As a result, they submit that the property was held on a resulting trust in favour of their father up until the time he transferred his beneficial interest to Philip and Stephanie in 1997.
- [317] On the other hand, the defendants contend that either: (1) the Declaration of Trust is effective, resulting in the beneficial interest belonging to their father, their mother and "their descendants"; or (2) the Declaration of Trust is void, resulting in no intention to give beneficial ownership of the Nanto Avenue Property to Philip and Stephanie.

DISCUSSION AND CONCLUSION

- [318] This case is primarily a contest of credibility and reliability between Philip and Stephanie on the one hand, and Angela on the other, the principal players in this unfortunate family drama. Although the defence called a number of witnesses in addition to Angela, it is her evidence that is the lynchpin of the defence and the counter-claim.
- [319] As I noted at the outset of these reasons, the passage of time plays a significant role in the court's ability to assess the veracity and reliability of the evidence through the inevitable erosion of memories and the loss of objective evidence such as documents created by neutral third parties, which might have helped to create a fuller and more reliable picture of the various events and transactions at the heart of this lawsuit.
- [320] As it is, the main third party documents consist of the fragmentary contemporaneous banking documents produced by Philip, the various wire transfers produced by Stephanie, and the limited redacted banking records and the wire transfers produced by Angela. Angela also provided contemporaneous receipts/invoices, which she advanced as evidence of her expenditures on behalf of Eleanor at the time of these events.
- [321] Apart from those third party documents, a determination of the amount, source, purpose and use of the funds flowing from Hong Kong to Vancouver and the purpose for the funds sent from Vancouver to Hong Kong is reliant on the evidence of the principal parties.
- [322] In general, Angela produced more documents in the form of notes, said to be contemporaneous, and receipts and invoices, said to reflect the purpose of the funds sent to her, than did Philip or Stephanie. The probative value of the various notes, receipts and invoices produced by Angela is, however, entirely dependent on the credibility and reliability of her testimony about them, taken as a whole in the context of all the circumstances.

[323] Similarly, Philip's and Stephanie's versions of the various transactions at issue, while less reliant on self-generated notes and documents said to underlie them, is reliant on their respective credibility taken as a whole and in context of the prevailing circumstances.

[324] The often quoted statement of O'Halloran J.A. in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357, 4 W.W.R. (N.S.) 171 (BCCA), is particularly cogent in this case:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[325] Considering that test, and applying it to the evidence in this case, leads me to reject the evidence of Angela on a number of critical points and to reject the underlying premise of the defendants that the plaintiffs sent no money to her in furtherance of the property acquisition plan.

[326] I find Angela's evidence to be flawed because it relies on the mechanism of coincidence, it includes improbable and elaborate explanations to explain away telling circumstances and, in connection with the notes related to the donations to the Liberal Party and the Burnaby Hospital Foundation it relies on a manufactured foundation..

[327] The thrust of Angela's evidence is that she is trained as an accountant, managed her immediate and extended family's financial affairs in Canada and is an assiduous keeper of records. It is further her evidence that every cent that was paid for and towards the various investment properties in British Columbia (excluding Woolridge Island which was contributed to by the Cheungs, and the Nanton Avenue Property, which was purchased by Mr. Ng) was provided by her and Dr. Woo.

[328] It is further her evidence, in the face of the wire transfers introduced by Stephanie as evidence of her contribution of funds, that anything purported to have been sent by Stephanie was in fact from either Eleanor (in most cases) or her father (in one case). Angela has produced a variety of self-generated notes, some invoices and receipts in support of that contention.

[329] In her first written communication to both Philip and Stephanie concerning the issue of indebtedness, however, Angela failed to assert that they made no contribution at all to the acquisition of the properties. Rather, in each case, she asks each of the plaintiffs to "Please send me the detail of the money you have sent me for the purchase of your rental properties. I would like to verify my figures before I send you a detailed summary."

- [330] That request is at odds with her evidence that she received absolutely no funds from them at all. Her explanation is that in each case, she had a prior conversation with each of them separately in which they each asserted that they had sent her money and in responding as she did, she was simply being polite. In my view, that assertion rings hollow given that on her version of the events, there is no basis for any ambiguity or ambivalence about the issue. In the letter to Philip, she affirmatively asserted that he had not paid for any of his share in Woolridge Island. By identifying it specifically as something for which he had not paid, she clearly implied that there were in fact payments made for the other properties.
- [331] I find it significant that Angela did not allege in her letter to Stephanie, as she did in her letter to Philip, that Stephanie failed to make any payments in relation to Woolridge Island. That is in my view a meaningful omission, and I infer from it that Angela was aware that Stephanie had contributed some funds specifically earmarked as in furtherance of the purchase of and construction on Woolridge Island. That finding is consistent with Stephanie's handwritten note on the June 26, 1997 wire transfer, which confirmed that a portion of was to be allocated for the island.
- [332] Moreover, both in her letter to Stephanie and to Philip and in contradiction to her evidence at trial, she asserted that the various sums she claimed were owing were owing immediately. In the letter to Stephanie, she claimed that the amount owing resulting from the shortfalls on the West 31st Avenue Property "is currently overdue". At trial, however, she asserted that the payments made on Philip's and Stephanie's behalfs were part of "the long term revolving loan", which was in effect not to be paid off until Dr. Woo retired so that the income flowing from the interest and profit would be taxed at a lower rate than in his peak earning years.
- [333] In addition, in my view, it is significant that in her letters to Stephanie and Philip, Angela makes absolutely no claim of having "loaned" \$200,000 to Stephanie from the sale of the West 20th Avenue Property. Similarly, she makes similarly no claim of having "loaned" any money to Philip from the proceeds of sale of the West 23th Avenue Property.
- [334] Thus, the letters sent by Angela to Philip and Stephanie on October 3, 2005 and October 5, 2005, respectively, do not fit with her story as to the nature of her agreement between them, nor does it fit with her assertion that they made absolutely no payments to her for the property purchases.
- [335] A significant instance of Angela relying on the mechanism of random coincidence to assert no connection between apparently related events occurred in relation to the purchase of the West 31st Avenue Property. The salient circumstances of that transaction are that on July 1, 1993 Angela agreed to purchase that property for Stephanie for \$475,000. The completion date was set for August 16, 1993. She made a \$30,000 deposit to the realtor (Olympia) on July 6, 1993. On July 20, 1993 she received \$190,000 by wire transfer from Stephanie, and on August 3, 1993, Stephanie was approved for a \$285,000 loan from RBC to be secured by a mortgage against the property. The difference between the purchase price

of the property and the loan applied for and approved is \$190,000, the amount sent by Stephanie and said by her to be used in the purchase of the investment property that was to close a few weeks later. Angela's story, supported by Eleanor, was that the \$190,000 was money sent by Eleanor (in a lucky amount) for the possible future purchase of a yet to be determined farm or island property. The fact that it corresponded in time and amount to the balance of the purchase price of Stephanie's property is mere coincidence. In my view, that evidence of Angela has the air of a contrivance.

- [336] Similarly, Angela's production, allegedly from Eleanor, of a note she wrote on the back of an envelope, date stamped December 18, 1990, itemizing expenses she incurred for Eleanor and the production of various receipts and invoices reflecting precisely the amount of the wire transfer sent by Stephanie on February 13, 1992 in the amount of \$6,079.03 (CDN) appear to be contrived for two reasons. The first is that \$6,079.03 (CDN) is equivalent to precisely \$40,000 (HK). It seems more likely that Stephanie would send an even amount as part of an ongoing practice of sending funds to Canada than it does that the total amount of expenses allegedly owed by Eleanor to Angela was exactly, and coincidentally, equivalent to \$40,000 (HK).
- [337] That conclusion seems even more likely when it is considered with the fact that one of the expenses Angela used to reach the sum of \$6,079.03 was a single item from a shopping trip to the United States, which she converted into Canadian Funds. What is peculiar about this, however, is that Angela purported to attribute the remainder of the U.S. expenditures from that same trip as part of the justification for the \$28,231.32 (U.S.) that she received on February 20, 1992, just a week later, from Stephanie. There is no rational explanation of why Angela would include one U.S. expense in one itemization of monies owing, but use the rest as part of the rationalization for why she was sent a quantity of money in U.S. dollars from Eleanor just a week later, unless she was deliberately, after the fact, trying to account for the wire transfers received from Stephanie.
- [338] The presence of Angela's notes on the back of an envelope date-stamped at a time contemporaneously with when Angela said she made the notes, lends apparent authenticity to the notes. However, there is no reason why Eleanor, to whom Angela allegedly gave the itemized expenses once they were paid, would keep them. In my view, that casts some doubt on the authenticity of the notes. Moreover, there is evidence that Angela kept a letter and envelope sent from Philip in 1985 which allows the inference that it was she, not Eleanor, who kept out-dated correspondence and had the envelopes available to make self-serving notes on, long after the fact.
- [339] The objective improbability of Angela's various explanations for Stephanie's wire transfers comes into sharp focus when her evidence concerning the notes on the rural property tax notice envelope which she made of Eleanor's request to her to donate \$20,000 to the Burnaby Hospital Foundation and \$30,000 to the B.C. Liberal Party is considered.

- [340] The unequivocal effect of Angela's original evidence was that the notes on the envelope were made contemporaneously with the events they described. That they conveyed that message would be abundantly clear to Angela, who is intelligent and sophisticated.
- [341] That her evidence respecting the notes at issue was of a piece with the evidence of the other notes which Angela claims to have made contemporaneously, to authenticate her claims, would also not be lost on her.
- [342] Her present evidence to explain away the anachronism of her earlier evidence is not persuasive. Her explanation that she needed to "report to Eleanor" and wrote the notes on the back of the envelope for that purpose and delivered it and the receipts to Eleanor's house, eleven years after the fact, is contrived, as is her evidence as to why she did not do it immediately as she claims to have done with all the other notes and receipts.
- [343] I do not accept Angela's evidence with respect to the notes and I find it was her intention to convey to the court that they were made contemporaneously in an effort to authenticate her evidence concerning the wire transfers from Stephanie.
- [344] I accept the evidence of Ms. Vertesi that she received a cheque from Angela on behalf of the Cheungs, said to be for \$30,000 as a donation to the Liberal Party. That does not, however, establish that the \$30,000 came from the \$50,000 received by wire transfer from Stephanie on April 29, 1996 or indeed, that the receipt made out in the name of Dr. Woo necessarily relates to the cheque from the Chungs. There is a pattern in Angela's evidence of compiling various expenditures from various sources and combining them together to justify her assertions about the source and purposes of the funds sent to her, and I conclude, on the basis of all the evidence, her explanation about the \$20,000 to the Burnaby Hospital Foundation and the \$30,000 to the B.C. Liberal Party is part of that pattern.
- [345] In addition, I find Angela's explanation of the \$50,000 wire transfer dated December 20, 1995 as being from Eleanor for a donation to the University of Manitoba on behalf of Eleanor's husband, Stan, to be suspect. The receipt is in Dr. Woo's name and the donation was not made until July 5, 1996, some six and one-half months after receipt of the wire transfer. There is no explanation why it would take so long to make that donation and why, if Angela had access to Eleanor's accounts in Vancouver she would not have simply accessed them to make the donation on Stan's behalf at or near the time when the donation was made.
- [346] Similarly, the explanation for why Stephanie would wire transfer funds through her account on Eleanor's behalf also makes little sense as it would involve several steps, including transferring Eleanor's funds into Stephanie's account, either by cheque, cash or inter-branch transfer, and then a second transaction involving a wire transfer to Angela. As Stephanie had access to Eleanor's accounts in Hong Kong and Angela had access to Eleanor's accounts in Vancouver, any required repayment from Eleanor to Angela could have been done far more simply and directly than in the manner asserted to by Angela and by Eleanor.

- [347] Another factor to consider is that Angela testified that she and Dr. Woo owned four or five other investment properties and that fact was one reason why they wanted the properties at issue in Philip's and Stephanie's names - namely to avoid their property ownership being characterized as a business and attracting a higher tax rate.
- [348] There was little detail of the other properties but presumably, they involved significant initial expenditures and some ongoing costs over and above the various properties at issue in this case. It seems to me unlikely that Angela and Dr. Woo would have the financial ability to finance up to twelve different properties, including their own home on Pine Crescent, without some significant contribution from Philip and Stephanie.
- [349] For these reasons I accept neither Angela's nor Eleanor's evidence as to the source or purpose of the funds sent by the wire transfers at issue.
- [350] Insofar as Stephanie's and Philip's evidence is concerned, while I accept that it was deficient in some areas and unreliable in others, due at least in part to the passage of time and the apparent loss of records, I accept overall that Philip and Stephanie had access to funds of their own and used those funds to make significant contributions towards the acquisition and maintenance of the various properties.
- [351] In Philip's case, while the documentary evidence was somewhat scant, it did involve a wire transfer from the Wing Lung Bank to the RBC in Kerrisdale of \$22,168 (U.S.) on August 1, 1987. It also involved a Citibank cheque to Wing Lung Bank in the amount of \$110,000 (CDN) with a notation "remittance to Angela" dated May 3, 1989, the same date as the purchase date of the West 23rd Avenue Property that he shared with Philip. That sum represented approximately one-half of the down payment, which corresponds with Philip's share. Finally, there was uncontested evidence that Philip had at least \$150,000, which he paid to Eleanor and Stan to use their coach house for ten years or to acquire an interest in the property. There was also evidence that in September of 1990, following the purchases of the West 27th Avenue Property, the West 23rd Avenue Property and his contribution to the Cheung's property, Philip still had approximately \$150,000 (U.S.) in term deposits at the RBC in Kerrisdale.
- [352] So far as Stephanie is concerned, for the reasons I have already set out, I accept her evidence over that of Angela and Eleanor that, in the main, the wire transfer documents represent some funds that Stephanie sent to Angela in furtherance of the plan that she and Philip would buy investment properties in Vancouver using Angela as a power of attorney. I accept that both Philip and Stephanie earned sufficient income through their respective employment that, when combined with their free accommodation, allowed them to accumulate capital for use in acquiring the investment properties in Vancouver.

- [353] As to what sums were advanced by Stephanie and Philip for use in the property purchase plan, and what, if any, sums were loaned to them by Angela as part of the overall financial relationship among them, the issue is somewhat clouded by incomplete or non-existent records and issues of reliability and credibility.
- [354] So far as Stephanie is concerned, I am unable to accept that the \$60,000 wire transfer sent on October 15, 1990 from her father's bank account was on her behalf for the purchase of the properties.
- [355] Stephanie's original claim that the account was hers, until confronted with evidence that it belonged to her father, which in turn prompted a different explanation of how the funds were nonetheless sent on her behalf, does not inspire confidence in the reliability of her claim in relation to that wire transfer.
- [356] I accept, however, that the other wire transfers sent by Stephanie to Angela do reflect funds sent in furtherance of the property purchase scheme.
- [357] So far as her claim of sending \$108,000 in 1988 and \$3,000 cash in 1989 for the purchase of the West 27th Avenue Property is concerned, Stephanie's evidence is somewhat contradictory as to when the funds were sent and from what bank account they were sent from. Stephanie did rely on a note that she asserted was made within a few months of the transaction. She intended to provide the note as a record of the transaction from her files. She was not, however, able to explain why there was no wire transfer or any other record of the payment, and her evidence regarding the date she put on the note is contradictory.
- [358] While, for the reasons I have given, I do not accept Angela's blanket denial of having received any funds from Stephanie, I am not satisfied, given the uncertainty woven into Stephanie's evidence and her contradictions, and without corroboration beyond her own somewhat ambiguous note, that she has discharged the burden of proving that she in fact sent those funds to Angela on account of the house purchase scheme. On balance, therefore, I am not satisfied that Stephanie paid the \$108,000 towards the down payment and miscellaneous costs as she claims. I similarly am unable to accept that she sent \$3,000 in 1989 in cash.
- [359] I am also unable to conclude that the \$145,384 remittance that Stephanie claimed to have made to Angela in 1994 towards the purchase of properties is made out on the evidence. Stephanie claimed that her father had borrowed that amount from her, but the evidence does not support that allegation. Similarly, the "credit of \$19,000" claimed by Stephanie for money Angela spent in Hong Kong after Stephanie "set her up" with the amount is also not established on the evidence. Again, given the difficulties that have been identified with Stephanie's recollections, and given the contradictions in her evidence, I am not satisfied that the burden of proof is met without some objective corroboration of the asserted transactions.

- [360] I thus conclude that in total, between 1988 and 2005, Stephanie advanced the sum of \$527,232.48 towards the property purchase plan, but not the \$862,616.48 that she claims.
- [361] Insofar as Philip is concerned, a determination of what he expended on the property purchase plan is more problematic, given the scarcity of records and the somewhat speculative nature of what he claims to have sent and received back from Angela. While I do not accept Angela's evidence that Philip advanced no funds in furtherance of the property purchase plan, I am simply unable, on the evidence before me, to determine what amounts he advanced and to what extent the funds he did advance were used by Angela in the property purchases. At the same time, because of my conclusion that Angela's evidence lacks credibility and reliability and cannot be relied on to provide a proper foundation for any sort of accounting, I am unable to conclude on the balance of probabilities that the defendants have made out their counterclaim against Philip.
- [362] In the result then, I conclude that both Philip and Stephanie made substantial ongoing contributions to the purchase and maintenance of the various investment properties, that Angela's evidence to the contrary cannot be relied on, that the quantum of Philip's contributions cannot be determined and that Stephanie's proven total contribution is \$527,232.48. I further conclude that as of 2007, the balance owing from the Woo defendants to Stephanie is \$138,713.60 based on the plaintiffs' analysis of the parties' respective contributions, income and expenses after discounting Stephanie's contribution in the way that I have detailed.
- [363] So far as Philip is concerned, I am unable to conclude what, if anything, he is owed by Angela, or what, if anything, he owes Angela. This is a circumstance in which the burden of proof determines the outcome, as the onus is on Philip as plaintiff, to show that the defendants owed him funds resulting from the transactions at issue, and the onus is on the defendants as plaintiffs by counterclaim to prove that Philip owes them funds arising out of the various transactions including the asserted personal expenses and loans. In the circumstances, I find that neither Philip nor the Woo defendants have discharged their respective burden of proof entitling them to damages, and I dismiss their respective claims against one another in that regard.
- [364] Insofar as Stephanie is concerned, I award her damages in the amount of \$138,713.66 together with pre-judgment interest.
- [365] I have concluded that with respect to the Nanton Avenue Property, the proper disposition is to make a declaration that the plaintiffs hold it in trust for the estate of Mr. Ng.
- [366] The arguments advanced by the plaintiff are that, firstly, the trust created by the Declaration of Trust is valid, but that the father, Mr. Ng, retained an express power to revoke the trust and did so.

[367] The parties agree on the proposition that without an express power to revoke the trust, the settlor does not, as a matter of law, retain such authority. The plaintiffs' argument is essentially that although there are words conveying an intention to reserve a power to revoke in the Declaration of Trust, the father's dominance within the family unit justifies the inference that he had such a power.

[368] I do not find that argument persuasive, but in the result, conclude it is not necessary to deal with it because I conclude that the trust is not valid on its face.

[369] In D.W.M. Waters, ed., *Law of Trusts in Canada*, 3d, (Toronto: Carswell, 2005) [Waters], the learned author discusses the essential elements of a trust as follows:

As Lord Langdale M.R. remarked in *Knight v. Knight*, in words adopted by Barker J. in *Rehnan v. Malone* and considered fundamental in common law Canada, (1) the language of the alleged settlor must be imperative; (2) the subject-matter or trust property must be certain; (3) the objects of the trust must be certain. This means that the alleged settlor, whether he is giving the property on the terms of a trust or is transferring property on trust in exchange for consideration, must employ language which clearly shows his intention that the recipient should hold on trust. No trust exists if the recipient is to take absolutely, but he is merely put under a moral obligation as to what is to be done with the property. If such imperative language exists, it must, second, be shown that the settlor has so clearly described the property which is to be subject to the trust that it can be definitely ascertained. Third, the objects of the trust must be equally and clearly delineated. There must be no uncertainty as to whether a person is, in fact, a beneficiary. If any one of these three certainties does not exist, the trust fails to come into existence or, to put it differently, is void.

The principle of the three certainties has been fundamental at least since the days of Lord Eldon, and no one today could seek to challenge the principle; the problems that exist concern the issue of what constitutes certainty.

[370] In the present case, the beneficiaries of the asserted trust are defined as:

Ng Po Sum and To Pui Kui and their descendants in such proportion or shares as contained in the Memorandum and Articles of Association of Ng Sheung Ming Association Ltd., a company incorporated in Hong Kong.

[371] The Ng Sheung Ming Association Ltd., however, names only Ng Po Sum and To Pui Kui as the sole founders of the association. The defendants submit that this limits the interpretation of the beneficiaries to "the father and mother as beneficiaries of an interest that they are free to pass on to their descendants should they choose to do so".

[372] In my view, this interpretation needs to considerable uncertainty, both as to the objects and the subject matter of the trust. With regard to those characteristics of a trust, in Waters at p. 156, the learned author says this:

Ascertainable is a somewhat ambiguous word, but in this context it means two things: first, that is possible to determine, if the intended beneficiaries are not referred to by name but a class description, whether any person is a member of that class, and, second, that the totality of the membership of that class is known. Ascertainment means certainty, and it is certainty on both of those matters that must be established if the trustees have no discretion as to distribution among the class members, but hold the property for beneficiaries who have interests whose amount or quantum is set out in the instrument creating the trust.

[373] In my view, there is nothing in the Declaration of Trust, or in the Articles of Association of the Ng Sheung Ming Association which would permit any certainty as to either the beneficiaries (objects) or the amount of quantum of interests (subject matter) established by the trust in the Nanton Avenue Property.

[374] I conclude that that want of certainty renders the trust void.

[375] In *Pecore v. Pecore* (2007) SCC 17, the Supreme Court of Canada established that where a parent gratuitously registers a property in the name of adult children, there is a presumption of resulting trust. In this case, despite the evidence of Philip, Stephanie and Olympia, I am not satisfied that the presumption of a resulting trust has been rebutted. It is clear from the Declaration of Trust that it was not Mr. Ng's original intention to make a gift of the property to either Philip or Stephanie or both of them. On the contrary, it is clear he had a significantly different intention for the property although I have concluded that his intentions were not manifested with sufficient certainty or clarity to sustain the trust he sought to create.

[376] Further, although it was Stephanie and Philip's evidence in effect that their father told them the trust was taken care of and the property was theirs, there is no indication that this was so. Mr. Ng was, apparently, a successful businessman, who was not adverse to putting things in writing. There is no evidence that he ever did anything in writing to attempt to revoke the trust that would evidence an intention to give the Nanton Avenue Property as a gift to Philip or Stephanie or both of them.

[377] The conversations which Philip and Stephanie assert they had with their father were at best casual, and there is no evidence of any attempt to formalize matters.

[378] So far as Olympia is concerned, the conversation was again casual, in the context of other issues involving the disposition of the father's estate, which are matters at issue in the Hong Kong law suit, and in the absence of any objective confirmatory evidence, which might, in the circumstances, be expected. I am not satisfied that the plaintiffs have rebutted the presumption of resulting trust in respect of the Nanton Avenue Property.

[379] I am not persuaded by the mother's evidence that the funds for the purchase came from her. It appears clear from all the evidence that the funds came from the father's bank account and the mother's evidence, without confirmation, in the context of highly contentious litigation, does not satisfy me that she is a beneficiary of the resulting trust. Accordingly, I conclude that the plaintiffs hold the Nanton Avenue Property in trust for the father's estate alone.

[380] In the result, I make the following orders with respect to the subject matter of this law suit:

- (a) a declaration that the mortgages are of no force and effect;
- (b) a direction to the Registrar of Land Titles to discharge the mortgages and the Certificates of Pending Litigation;
- (c) the plaintiff Stephanie is entitled to an award of damages against the Woo defendants in the amount of \$138,713.60 together with interest in accordance with the Court Order Interest Act on that amount.;
- (d) the plaintiff Philip Kwok Piu Ng's claim of damages against the Woo defendants is dismissed;
- (e) the counter-claim of the defendants against the plaintiffs and as against Olympia is dismissed;
- (f) there will be a declaration that the Nanton Avenue Property is held in trust by the plaintiffs for the estate of the father, Po Sum Ng;
- (g) the remaining relief sought by the defendants, plaintiffs by counter-claim, is dismissed.

[381] The plaintiffs are entitled to their costs of this action unless there is some matter of which I am unaware in which case the parties have liberty to apply.

"A.F. Cullen J."

The Honourable Mr. Justice A.F. Cullen

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