

CANADA / JUDGMENT

Norkum v. Fletcher

2018 BCSC 904

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Supreme Court of British Columbia

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2018 BCSC 904 Norkum v. Fletcher

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Norkum v. Fletcher,

2018 BCSC 904

Date: 20180601

Docket: S161524

Registry: Vancouver

Between:

Michael Alexander Norkum

Plaintiff

And

Jeanette Elvie Fletcher

also known as Jeanette Elive Fletcher

Defendant

Before: The Honourable Mr. Justice Dley

Reasons for Judgment

Counsel for the Plaintiff:

J.C. McKechnie

Counsel for the Defendant:

W.D. McEwan

E. Patel

Place and Date of Trial:

Vancouver, B.C.

October 30-November 3

November 6-10, 2017

December 18, 2017

April 30-May1, 2018 and

May 3-4, 2018

Place and Date of Judgment:

Vancouver, B.C.

June 1, 2018

Introduction

- [1] Sex for pay, opportunism, deception and false expectations form the backdrop to this litigation.
- [2] This proceeding arises out of an eight and a half year relationship between the parties. The plaintiff, Mr. Norkum, was a successful businessman looking for companionship. The defendant, Ms. Fletcher, was an enterprising exotic dancer seeking financial security.
- [3] The nature of the relationship between Mr. Norkum and Ms. Fletcher is key in the adjudication of the plaintiff's claims.
- [4] Mr. Norkum developed strong feelings for Ms. Fletcher and her children. Mr. Norkum paid Ms. Fletcher to be his companion and intimate partner. He showered her with gifts and lavish vacations. He paid for property in Trinidad and contributed to the purchase and extensive renovations of a home in Coquitlam. He says the relationship became a traditional spousal relationship centred on family.
- [5] Although Ms. Fletcher had some romantic feelings for Mr. Norkum, she regarded the relationship as a business enterprise. Ms. Fletcher viewed Mr. Norkum as a "good pocket book" or "sugar daddy" and regarded the monetary benefits as gifts and monies paid for her time. The nature of the relationship to her was highly transactional.
- [6] The relationship has ended and Mr. Norkum now seeks repayment of what he gave to Ms. Fletcher. He claims in deceit, resulting trust, conversion and unjust enrichment.

- [7] For the reasons set out below, I have concluded that the property in Trinidad and the renovations to the home in Coquitlam were not gifts. All other monies or benefits bestowed upon Ms. Fletcher were payments for services or gifts.
- [8] Mr. Norkum is awarded judgment in the amount of \$1.3 million.

Background Facts

- [9] Mr. Norkum is now 65 years old. He was in the business of managing the construction of mining and power projects mainly in rural Saskatchewan. He conducted his business through his wholly owned limited company, MAN Project Management Inc. ("MAN").
- [10] Mr. Norkum was successful and wealthy, working long and concentrated hours. He was on the jobsite for 75% of his time.
- [11] Mr. Norkum had separated from his wife in 2004; they had not been divorced. He had two adult children with whom his relationship was either non-existent or distant.
- [12] Ms. Fletcher is now 43 years old. She was born, raised and educated in Trinidad. Ms. Fletcher took some post-graduate courses and sold insurance for about two years. She was married and lived in Germany before separating and settling in the Toronto area in 2002. She and her husband divorced in 2003. Ms. Fletcher received support from her spouse and also earned income by selling hairpieces and accessories. She determined that her annual income of \$45,000 from that business was not sufficient and, in 2004, turned to exotic dancing along with ancillary services.
- [13] In the years 2004 - 2007, Ms. Fletcher worked six days per week. She earned \$500-\$800 on slow nights and \$1,500-\$3,000 on busy nights. She was earning a six-figure income per year. After about six months of working as a dancer, Ms. Fletcher combined her savings and a loan from a client to buy a home in Mississauga.
- [14] In July 2007, while commuting through Pearson Airport in Toronto, Mr. Norkum stopped in at a "gentleman's club" known as the Landing Strip. Ms. Fletcher introduced herself to him by planting her foot in his lap and so began their relationship.
- [15] In October 2007, Mr. Norkum invited Ms. Fletcher to accompany him on a vacation to Jamaica to which she responded that she could not afford the time away from work. Mr. Norkum offered to compensate her for her lost earnings as a result of being away from the Landing Strip during the vacation, which she told him was approximately \$1,000 per day. He agreed and paid Ms. Fletcher \$3,000 in compensation.
- [16] In December 2007, Mr. Norkum placed Ms. Fletcher onto the payroll of his company. She provided no services to the company, but was paid a monthly salary of \$10,000, plus health benefits.

- [17] The parties looked at several potential franchise opportunities for Ms. Fletcher to operate, but none of those came to fruition. There was little genuine effort made to pursue business opportunities for Ms. Fletcher other than her being at Mr. Norkum's beck and call.
- [18] When Mr. Norkum was away from his jobsites, the couple travelled extensively (49 international vacations). They flew business class and frolicked at five-star adult vacation resorts. Mr. Norkum paid for all of the expenses and lavished Ms. Fletcher in luxury. He bought her expensive gifts. For example, he gave Ms. Fletcher three watches, the value of which was in excess of \$100,000. Mr. Norkum also provided Ms. Fletcher with vehicles such as a leased Mercedes. He bought her a Lexus SUV as a Christmas gift in 2013.
- [19] The biological father of Ms. Fletcher's children is Gregory Bostwick. Mr. Bostwick is now 61 years of age. He met Ms. Fletcher at a trade show in Ontario in February 2006. At that time, he was married with two children and lived in Vancouver. Mr. Bostwick owned a food distribution company that required him to make monthly visits to Toronto. By the summer of 2006, he and Ms. Fletcher were having an intimate relationship.
- [20] Ms. Fletcher planned to be a single mother. As a result of medical advice, she determined that her limited option for becoming pregnant was through in-vitro fertilization. Mr. Bostwick agreed to be the sperm donor. Ms. Fletcher did not tell Mr. Norkum of her intention to become pregnant or of Mr. Bostwick's existence.
- [21] While they were vacationing in Mexico in April 2008, Mr. Norkum learned that Ms. Fletcher was pregnant. Mr. Norkum was shocked, but continued to provide his support, paid Ms. Fletcher's monthly salary and took her shopping in expectation of the new arrivals.
- [22] Ms. Fletcher kept in touch with Mr. Bostwick during her pregnancy and he was present when Ms. Fletcher gave birth to twins in January 2009.
- [23] Two months after the twins were born, Ms. Fletcher resumed her dancing career - Mr. Norkum's company was still paying her. However, the return to dancing was not successful.
- [24] Mr. Norkum and Ms. Fletcher broke off their relationship for a period of time in 2009. During that interval, Mr. Norkum terminated Ms. Fletcher's monthly "salary" payments.
- [25] In early 2009, Ms. Fletcher decided to move to Vancouver. She did not tell Mr. Norkum of that decision until she emailed him on July 10, 2009 informing him of her "intent to bid" on a house in the Vancouver area. She said she needed confirmation of employment with MAN in order to substantiate her ability to obtain financing for the purchase of a home in Coquitlam ("Ranch Park Way").
- [26] In late August or early September 2009, the parties reconciled and on September 1, 2009 she went back on payroll. On September 9, Ms. Fletcher was short of funds to close on her purchase of Ranch Park Way. Even though their relationship was on a "time out", she contacted Mr. Norkum on that date to inquire if he would provide the shortfall of about \$88,000. He agreed to contribute \$50,000 immediately and to later pay off the balance of the

required funds from a loan that one of Ms. Fletcher's friends provided. There was no discussion regarding the basis upon which Mr. Norkum was contributing to the purchase. He said that the contribution was based on their reconciliation and that the monies would be used for the purchase of a family home that they were investing in together. Ms. Fletcher said the money could have been back pay or a gift, but stated she was uncertain which.

- [27] In April 2011, Ms. Fletcher's salary was increased by \$5,000 per month to \$15,000 per month, largely as a result of additional expenses associated with the twins and the mortgage for Ranch Park Way.
- [28] Other than a second interruption in the relationship in April 2013 when Mr. Norkum also terminated her monthly salary, Ms. Fletcher was paid from December 2007 to December 2015.
- [29] In 2011, the parties determined that they needed a house to entertain their guests when everyone descended into Trinidad for Carnival. Mr. Norkum paid the equivalent of \$200,000 Canadian to buy the property (the "Trinidad Property"). Because of some concerns arising out of foreign investment rules, the Trinidad Property was placed solely into the name of Ms. Fletcher.
- [30] Mr. Norkum typically transferred funds as required by Ms. Fletcher into her account at Scotiabank. In December 2010, Mr. Bostwick became a joint account holder with Ms. Fletcher on the Scotiabank account. Mr. Norkum did not realize that had occurred until he attended Ms. Fletcher's examination for discovery in September 2016. Ms. Fletcher explained that she put Mr. Bostwick's name on her accounts so that the children would have some security if something happened to her.
- [31] In April 2011, GAG Enterprises Ltd. was incorporated. Ms. Fletcher and Mr. Bostwick were directors. The company purchased two hydra vac trucks that were operated by two other directors in Alberta. Mr. Norkum was not aware of this enterprise until February 2016.
- [32] In July 2011, again unbeknownst to Mr. Norkum, two adjacent properties in Port Moody were purchased jointly by Ms. Fletcher and Mr. Bostwick.
- [33] After purchasing Ranch Park Way, Mr. Norkum and Ms. Fletcher's father performed renovations to the property in order to provide accommodation for the nanny in what had been the garage. In April 2010, Mr. Norkum and Ms. Fletcher discussed a more extensive house renovation at Ranch Park Way. In 2012, an architect was retained to render the drawings for the anticipated renovations to Ranch Park Way.

- [34] Mr. Norkum's first knowledge of Mr. Bostwick came on April 1, 2013 as a result of receiving an email mistakenly forwarded by Ms. Fletcher showing Mr. Bostwick to be the sender and attaching a photo of one of the twins with the caption, "my child". Ms. Fletcher disclosed to Mr. Norkum that Mr. Bostwick was the sperm donor and father of the children. Mr. Norkum was very upset and "ended" the relationship. He seized the leased Mercedes and terminated Ms. Fletcher's salary. The separation and the salary interruption lasted about a month.
- [35] In early 2014, the renovations at Ranch Park Way began; when they ended, the home had been transformed from a dated 2300 sq. ft. home to a modern house of over 4400 sq. ft.
- [36] The parties had disagreed as to how the construction should proceed and Mr. Norkum refused to have his name on the renovation contract. Both parties made decisions in consultation with each other and unilaterally as to certain aspects of the construction. One matter remained constant; Mr. Norkum paid for most of the costs. Some of the payments were made through deposits into Ms. Fletcher's Scotiabank account while other costs were paid directly by Mr. Norkum.
- [37] While the renovations were being done (May 2014 - April 2015), Ms. Fletcher and the twins moved into an apartment, the costs of which were borne by Mr. Norkum.
- [38] In September 2014, Ms. Fletcher placed a second mortgage on Ranch Park Way in the amount of \$1.9 million. Mr. Norkum only became aware of the encumbrance in early 2016.
- [39] By 2015, Mr. Norkum intended to move into Ranch Park Way. His work in Saskatchewan was coming to an end and he sold his condominium in August of that year. On or about June 2015, he moved some of his personal belongings into the home.
- [40] In late 2015, the parties' relationship was becoming fractured. Mr. Norkum slashed Ms. Fletcher's salary in half and, by the end of the year, the cut was complete. The relationship was nearing its end.
- [41] In January 2016, the parties' relationship rolled closer to a final termination. Mr. Norkum was busy preparing a proposal for a future project and was not available to attend the Trinidad Carnival. Ms. Fletcher went on her own. The parties spoke on the telephone, but the conversations descended into disagreements.
- [42] Mr. Norkum conducted some investigations and learned of Ms. Fletcher's involvement in GAG Enterprises and her acquisition of property with Mr. Bostwick. Mr. Norkum confronted Ms. Fletcher with that information and she accused him of invading her privacy.
- [43] The relationship ended on February 10, 2016 when the parties met at Ranch Park Way. There was a further argument, culminating in Mr. Norkum contacting the police who removed Ms. Fletcher from the home. Six days later, Mr. Norkum commenced this action.

[44] Since the summer of 2006, Ms. Fletcher and Mr. Bostwick maintained a sexual relationship, although intermittent at various intervals. Mr. Bostwick closed his business and moved into Ranch Park Way in early 2016. Mr. Bostwick is now a stay-at-home parent while Ms. Fletcher commutes to Toronto to earn income for the family.

Credibility

[45] The parties have their respective views of the relationship between them and differing versions of various events and issues. Some facts are not in dispute; however, much is in dispute. Both parties agree that issues of credibility or reliability of the evidence is very much in question.

[46] The fact finding role of the court requires an analysis of all of the evidence. Even though a witness may be unreliable or dishonest in one respect, that witness's evidence may be reliable or honest in another. A useful guide to assessing credibility was succinctly summarized in *Gill Tech Framing Ltd. v. Gill*, 2012 BCSC 1913 at paras. 27-28.

[47] The factors to be considered when assessing credibility were summarized by Madam Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, as follows:

Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis* (1926), 31 O.W.N. 202 (Ont. H.C.); *Faryna v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) [Faryna]; *R. v. S.(R.D.)*, [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Faryna* at para. 356).

[48] In assessing credibility in the face of conflicting evidence, the Nova Scotia Supreme Court in *Novak Estate (Re)*, 2008 NSSC 283 noted the following at paras. 36-37:

[36] There are many tools for assessing credibility:

- a) The ability to consider inconsistencies and weaknesses in the witness's evidence, which includes internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony and the testimony of other witnesses.
- b) The ability to review independent evidence that confirms or contradicts the witness' testimony.

- c) The ability to assess whether the witness' testimony is plausible or, as stated by the British Columbia Court of Appeal in *Faryna v. Chorny*, [1951] B.C.J. No. 152, 1951 CarswellBC 133, it is "in harmony with the preponderance of probabilities which a practical [and] informed person would readily recognize as reasonable in that place and in those conditions", but in doing so I am required not to rely on false or frail assumptions about human behavior.
 - d) It is possible to rely upon the demeanor of the witness, including their sincerity and use of language, but it should be done with caution (*R. v. Mah*, [2002] N.S.J. No. 349, 2002 NSCA 99, paras. 70-75).
 - e) Special consideration must be given to the testimony of witnesses who are parties to proceedings; it is important to consider the motive that witnesses may have to fabricate evidence. *R. v. J.H.*, [2005] O.J. No. 39 (Ont. C.A.), paras. 51-56).
- [37] There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety. On the contrary, a trier may believe none, part or all of a witness's evidence, and may attach different weight to different parts of a witness's evidence. (See *R. v. D.R.* [1996] 2 S.C.R. 291 at para. 93 and *R. v. J.H.*, supra).
- [49] Ms. Fletcher was critical of Mr. Norkum's evidence and argued that he "refused to answer straightforward questions, gave non-responsive answers, and at times was a combative witness". She says that his evidence should be viewed with the utmost caution.
- [50] Ms. Fletcher has referred to inconsistencies in Mr. Norkum's evidence as examples of why his testimony should not be believed or that his answers defy common sense.
- [51] Mr. Norkum was critical of Ms. Fletcher's evidence and that she treated the truth with some economy. He argued that she was "inconsistent, contradictory, self-serving, argumentative, frequently not credible and sometimes simply false". He pointed out that Ms. Fletcher was evasive, refused to answer questions and answered questions with questions of her own.
- [52] Mr. Norkum has referred to inconsistencies and contradictions as examples of why Ms. Fletcher's evidence should be rejected.
- [53] Both parties are accurate in their criticisms of each other's evidence. Both parties went out of their way to ensure that they gave evidence that was tailored to put their respective positions in the best light. Often times, the need for accuracy was an elusive target in contrast to shining the brightest light on their respective positions while dimming the lights on the opposing party.
- [54] Both parties were skilfully cross-examined, revealing the shortcomings in their testimonies. It serves no useful purpose to repeat all of the contradictions and inconsistencies as illustrated by counsel.

- [55] An example of Mr. Norkum's unreliable evidence were his denials that he caused MAN to pay Ms. Fletcher a monthly salary to be his mistress. In these circumstances, it defies credulity to accept the notion that he started paying Ms. Fletcher \$10,000 per month just to be a good friend.
- [56] An example of Ms. Fletcher's unreliable evidence were her complaints about her relationship with Mr. Norkum. She complained that she knew little about him and that she was excluded from his life. She said that she knew nothing about Mr. Norkum other than his name and phone number and that he had a condo in Saskatoon - this was after they had been together for some time. It defies credulity that they would have spent so much time together and all Ms. Fletcher knew of Mr. Norkum was his name, phone number and residence in Saskatoon.
- [57] Suffice to say, that each party had his or her strengths or weaknesses with respect to any given issue.

The Claim in Deceit

- [58] Mr. Norkum claims that Ms. Fletcher was guilty of the tort of deceit by expressing love for him when she actually considered the relationship to be nothing more than an exchange of money for sex, companionship and availability. He submits that Ms. Fletcher's email and text communications confirm that she represented that his romantic feelings were reciprocated.
- [59] Mr. Norkum also says that the deceit included her secret affair with Mr. Bostwick, her business dealings with Mr. Bostwick and Mr. Bostwick's active parenting of the twins. Mr. Norkum submits that Ms. Fletcher either did not disclose these matters involving Mr. Bostwick or was untruthful in her explanations when confronted in order to preserve the relationship so that the flow of financial benefits would continue from her relationship with Mr. Norkum.
- [60] Mr. Norkum says that all of the benefits he bestowed upon Ms. Fletcher since September 9, 2009 (the MAN salary, the gifts, the travel and other direct financial benefits in the form of transfer from his account into hers) were conferred in reliance upon her deceit.
- [61] There is no doubt that Ms. Fletcher was less than candid. Her explanations as to the cause of her pregnancy, her knowing "Gregory" (Bostwick), rather than "Greg" (Bostwick) and not revealing her business investments with Mr. Bostwick are only a tip of the deceptions that she so adeptly practised. However, I am also cognizant as to the circumstances under which the parties met (an exotic dance club). It defies credulity that Mr. Norkum, a highly intelligent, successful and sophisticated businessman, could have been as easily deceived as he claims when he embarked upon a relationship with a woman who explicitly demanded to be paid for her time.

- [62] Mr. Norkum referred to a number of emails from Ms. Fletcher where she seems to exclaim her love for him. Although she did have some affection for Mr. Norkum, those feelings and the extent of them seemed to wax and wane. That was also the case for Mr. Norkum because he too expressed love and anger in his written communications.
- [63] The legal question before me is whether Mr. Norkum has demonstrated clear and convincing proof that Ms. Fletcher's alleged deceptions (or silence) result in a cause of action framed in deceit.
- [64] The tort of deception requires proof of the following factors:
- a) a false representation or statement made by the defendant;
 - b) the statement was knowingly false;
 - c) the statement was made with the intention to deceive the plaintiff; and
 - d) the statement materially induced the plaintiff to act, resulting in damage.
- XY, LLC v. Zhu, 2013 BCCA 352 at para. 22.
- [65] A claim in deceit is akin to an allegation of fraud requiring clear and convincing proof: 415703 B.C. Ltd. v. JEL Investments Ltd., 2010 BCSC 202 at para. 98.
- [66] Mere silence cannot found an action in deceit, but active concealment can: 0915406 B.C. Ltd. v. 0834618 B.C. Ltd., 2013 BCSC 1099 at para. 107.
- [67] Ms. Fletcher's expressions of love and devotion were not always genuine. Ms. Fletcher recognized that Mr. Norkum was a source of financial security and she was prepared to accommodate him as long as he continued to pay. Ms. Fletcher was concerned about her long term financial security and, therefore, secretly invested with Mr. Bostwick. She was concerned about her children and placed Mr. Bostwick on her bank account so that there would be security for the twins if something happened to her.
- [68] Undoubtedly, Ms. Fletcher enjoyed Mr. Norkum's company. He treated her well and extravagantly. She in turn, provided the kind of companionship that Mr. Norkum desired. I, therefore, infer that some of the emails professing love and affection were part of Ms. Fletcher's role in keeping Mr. Norkum satisfied. They were utterances, which while perhaps flattering were more intended to mollify or pump Mr. Norkum. Ms. Fletcher wanted to keep her "good pocket book" handy.
- [69] However, not every untruth results in a deceit. In these circumstances, Ms. Fletcher was not entirely forthright about her working relationship. She did not view her working conditions in the same way as did Mr. Norkum. When she expressed her love for Mr. Norkum she was being somewhat untruthful about her reason for being with him. She was with him because he paid her well for her intimacy and companionship. I infer that she was concerned that if she did not express the appropriate level of affection, her job would be in jeopardy - not unlike any employee expressing dissatisfaction with his or her employer.

- [70] There is no clear and convincing evidence that Mr. Norkum was materially induced by Ms. Fletcher's statements to act in a manner that caused him damage.
- [71] Mr. Norkum began to lose trust in Ms. Fletcher as early as 2009. He lost trust in her when she failed to tell him about her intentions to move to Vancouver. Mr. Norkum was not so naïve that he was blindly following and taken in by the love note musings of his hired lover.
- [72] The silence with respect to the investments with Mr. Bostwick are not actionable under the deceit claim. Mr. Norkum did not know of these investments until the relationship with Ms. Fletcher was over. He had not made any inquiries about these matters that resulted in being misled. She had no legal duty to speak on these matters.
- [73] I am not convinced that Mr. Norkum was materially induced to act. He has, therefore, not proved all of the elements necessary for a claim in deceit.
- [74] Litigation within the family circle is undesirable: *P.P. v. D.D.*, 2017 ONCA 180 at para. 59. In the circumstances of this case, it cannot be said that the parties were part of the family circle. This was a transactional relationship built on a model designed at times to resemble a family circle. Nonetheless, the caution against litigation within the family is instructive.
- [75] Parties to a relationship, whether at the infancy stage or after maturation, may comment to each other about the strength or nature of their commitments. Some of these utterances might be "pillow talk". That does not make those comments actionable. Otherwise, parties would arm themselves with recorders and notebooks to document all such exchanges in anticipation of possible future claims.
- [76] The tort of deceit is not one that is to be liberally awarded in domestic or quasi-domestic situations and particularly not in the circumstances that existed between these parties.

The Law of Resulting Trust

- [77] The presumption of resulting trust applies in the following circumstances:

A purchase money resulting trust arises when a person advances funds to contribute to the purchase price of property, but does not take legal title to that property. Where the person advancing the funds is unrelated to the person taking title, the law presumes that the parties intended for the person who advanced the funds to hold a beneficial interest in the property in proportion to that person's contribution. This is called the presumption of resulting trust.

Nishi v. Rascal Trucking Ltd., 2013 SCC 33 at para. 1.

- [78] The presumption can be rebutted by evidence that the person making the contribution intended it to be a gift. The evidence of intention is to be considered at the time the contribution was made: *Nishi* at para. 2.

Gifts and Vacations

- [79] Mr. Norkum claims the cost of gifts and vacations as damages for deceit or unjust enrichment. He estimates these expenditures to be about \$488,000 in gifts and \$160,000 in vacations. He is not entitled to recovery.
- [80] Mr. Norkum's intentions are to be considered at the time the benefits were bestowed: *Wong v. Huang*, 2012 BCSC 975 at para. 23. He admitted that he gave such items as watches, jewellery and vehicles as gifts. There were no conditions attached. He cannot now reconsider and change his mind because the relationship has ended. Once a gift, always a gift.
- [81] The vacations were part of the job Ms. Fletcher performed. She was paid to accompany Mr. Norkum. She performed her duties. There is no basis upon which the vacation costs are recoverable.

Ranch Park Way

- [82] Mr. Norkum seeks a 95% interest in the equity to the Ranch Park Way residence. His claim is based on the premise that he contributed 95% of the costs to acquire and renovate the home. Mr. Norkum has totalled his contributions at \$1,570,855. He has framed his claim in unjust enrichment.
- [83] Ms. Fletcher says that all of the contributions made with respect to Ranch Park Way fall in the category of a gift or as part of her remuneration for providing services to Mr. Norkum.
- [84] A claim for unjust enrichment requires proof that Ms. Fletcher was enriched by Mr. Norkum and that Mr. Norkum suffered a corresponding deprivation in the absence of a juristic reason for the enrichment or corresponding detriment: *Kerr v. Baranow*, 2011 SCC 10 at paras. 36-40.
- [85] A juristic reason could include an intention to make a contract, a gift, or disposition of law. The plaintiff carries the burden to show the enrichment and corresponding deprivation, as well as the absence of an established category of juristic reason. If the plaintiff shows the absence of a juristic reason, the burden shifts to the defendant to establish another reason to deny recovery: *Kerr* at paras. 41-43; and *Garland v. Consumers' Gas Co.*, 2004 SCC 25 at paras 44-46.
- [86] The categories of juristic reason are not closed. In the absence of an established category of juristic reason, the court may deny recovery based on the reasonable expectations of the parties and public policy considerations: *Kerr* at paras. 43-45; the test is flexible: *Garland* at para. 39.
- [87] There can be no issue with the benefit to Ms. Fletcher. She received large sums of money to either spend as she wished or to pay as required for the house renovations. I am satisfied that she was enriched.

- [88] The second question is whether Mr. Norkum suffered a corresponding deprivation. Mr. Norkum paid sums of money and now has no resulting benefit. He is not on title to the property and enjoys none of the benefits of ownership or occupation.
- [89] However, the question remains as to whether Mr. Norkum suffered the deprivation when the funds were paid from MAN's bank account. Ms. Fletcher argues that if there was a deprivation then the loss is that of the limited company and not of Mr. Norkum in his personal capacity.
- [90] In *Kosmopoulos v. Constitution Insurance Co.*, [1987] 1 S.C.R. 2 at para. 13, the Court summarized the consequences of incorporation:

There is a persuasive argument that "those who have chosen the benefits of incorporation must bear the corresponding burdens, so that if the veil is to be lifted at all that should only be done in the interests of third parties who would otherwise suffer as a result of that choice": Gower, *supra*, at p. 138. Mr. Kosmopoulos was advised by a competent solicitor to incorporate his business in order to protect his personal assets and there is nothing in the evidence to indicate that his decision to secure the benefits of incorporation was not a genuine one. Having chosen to receive the benefits of incorporation, he should not be allowed to escape its burdens. He should not be permitted to "blow hot and cold" at the same time.

- [91] It is clear that Ms. Fletcher regarded Mr. Norkum as her benefactor - not MAN. She referred to Mr. Norkum as her "sugar daddy" or "a good pocket book" and that he was going to provide financial security for her. She explained that she invested for her future independent of Mr. Norkum to guard against the possibility that he might cease supporting her.
- [92] Mr. Norkum earned all of his income through MAN. That was where he parked his money. It was convenient and expedient to have the payments made by MAN, but the money was Mr. Norkum's as evidenced by the adjustment to his shareholders account and the allocation of funds as dividends. I accept Mr. Norkum's evidence that the monies paid for the acquisition of the Trinidad Property and other funds associated with Ranch Park Way were accounted for at year end through an adjustment to his shareholders account.
- [93] Even though Mr. Norkum could shield himself through incorporation, that was not what he intended to do when he had the payments come from the MAN bank account. He was simply using MAN as a convenient vehicle from which payments were made in an expeditious fashion for Ms. Fletcher's benefit.
- [94] I, therefore, conclude that the claim is properly that of Mr. Norkum - not MAN. I am satisfied that Mr. Norkum suffered a corresponding deprivation to Ms. Fletcher's enrichment.
- [95] There are three categories of payments associated with Ranch Park Way:
- a) The down payment of \$88,500;
 - b) The payments directly to contractors or paid to Ms. Fletcher for contractors' charges; and

- c) Payments made to Ms. Fletcher that were not accounted for in the renovations.
- [96] Ms. Fletcher had entered into a contract to purchase Ranch Park Way without any input from Mr. Norkum. It was only when she needed additional monies for the down payment did she ask him for any financial assistance. Mr. Norkum asked her to provide him with the details of the purchase and he would see what he could do. He initially contributed \$50,000 and the balance Ms. Fletcher borrowed from a friend. Mr. Norkum later advanced more money so that Ms. Fletcher could repay her friend.
- [97] Mr. Norkum says that this money was a loan.
- [98] During the time of the purchase, Mr. Norkum had his own condo in Saskatoon. Although he expressed his desire to live together as a family with Ms. Fletcher and her children, it was not a condition of the advance on the down payment. There were no conditions attached to the contribution. There were no terms discussed regarding repayment of the amount.
- [99] It is apparent that at the time the payment was made, it was unconditional. Mr. Norkum cannot now insist on terms or conditions simply because the relationship has dissolved.
- [100] Mr. Norkum was generous and wanted to be helpful, but that did not change the character of the payment. I conclude that the down payment was not a loan, but rather a gift.
- [101] The renovations to the home were commenced after the parties looked at other properties. They determined that upgrading the Ranch Park Way home was preferable to buying another house. They discussed the nature and extent of the renovations. Mr. Norkum engaged the services of an architect to draw the final design.
- [102] Mr. Norkum was expecting that in the long term, he would be moving into the residence. The plans included a home office for both parties to use. From the nature of their respective careers, the home office would be much more suitable for use by Mr. Norkum.
- [103] During the renovations, Ms. Fletcher moved into an apartment, the cost of which was borne by Mr. Norkum.
- [104] Ms. Fletcher testified that Mr. Norkum did not have much input during the renovation phase. I do not accept her evidence. It is apparent from the email exchanges that Mr. Norkum was an active participant even though he was living and working in Saskatchewan.
- [105] During the renovations, Mr. Norkum paid some contractors directly. At other times, Ms. Fletcher advised Mr. Norkum of bills that needed to be paid and he did so by sending her the requested sums. Some payments were made by Ms. Fletcher out of her Credit Union account.
- [106] Mr. Norkum did not want to sign a contract with Top to Bottom Construction. He disagreed with the notion of having the renovations done in two phases. The mere fact that he did not sign the renovation contract does not eliminate his claim. He continued to fund the renovations even though Ms. Fletcher signed the agreement with the contractor.

- [107] Mr. Norkum expected the renovations to be of advantage to him. He expected to move into the home. I am satisfied that Mr. Norkum would not have made the payments for renovations unless there was an expectation for him to move in and receive the benefits of the improvements to the home. The payments were not in the nature of a gift.
- [108] These payments were not part of Ms. Fletcher's remuneration for services provided. Her remuneration was set on a monthly amount and neither party considered the cost of the renovations to be part of that arrangement.
- [109] I am satisfied that there is no juristic reason from an established category. The plaintiff has made out a prima facie case of unjust enrichment. The burden now shifts to the defendant to show another reason to deny recovery: Garland at paras. 44-46.
- [110] Ms. Fletcher argues that this is one of those cases where the court should consider the reasonable expectations of the parties, individual autonomy and how the parties organized their relationship.
- [111] The reasonable expectations of the parties, even if falling short of a binding contract, may result in a "bargain" that constitutes a juristic reason for the enrichment that is not encompassed by the existing categories: Kerr at para. 123.
- [112] The parties described their respective views of the relationship, particularly after the birth of the twins in January 2009.
- [113] Mr. Norkum was fond of the children and developed affection for them. He described how as each year passed, the relationship with Ms. Fletcher became stronger and they had become a family.
- [114] In spite of some outings and vacations with the children, Mr. Norkum's focus was primarily on Ms. Fletcher. On many occasions, when Mr. Norkum had time away from his jobsites, he and Ms. Fletcher vacationed on their own (it is not likely that their vacation destinations would have been suitable for children). On other occasions, Mr. Norkum rented accommodation in downtown Vancouver so that he and Ms. Fletcher could enjoy each other's company without the children.
- [115] I conclude, that while his business was flourishing in Saskatchewan, Mr. Norkum was content to live at Ranch Park Way for brief periods of time and enjoy the family atmosphere in that home. I also conclude that in the long term, Mr. Norkum intended to move his base from Saskatchewan to Ranch Park Way.
- [116] Ms. Fletcher was content to spend time with Mr. Norkum during the short intervals when he was able to get away from his jobsites. She was content to spend the time with him vacationing, setting up at a local hotel or being at Ranch Park Way. I conclude that it was Ms. Fletcher's intention to have Mr. Norkum continue paying her salary, so that she could maintain her lifestyle.

- [117] Ms. Fletcher's routine was to have the nanny care for the children during the day while she spent her time in the city dining and shopping. I conclude that as long as Mr. Norkum was only around for limited periods of time, Ms. Fletcher was quite content with the arrangement. However, when Mr. Norkum indicated that he intended to move into Ranch Park Way, Ms. Fletcher was not prepared to continue the relationship, which would be more of a full-time presence.
- [118] Ms. Fletcher said that she was surprised when Mr. Norkum announced his intention to move to Vancouver. She asked him where he was going to live. When he replied that he was going to move into Ranch Park Way, Ms. Fletcher balked in no uncertain terms. She testified that the reason for her refusal to allow Mr. Norkum to move in was because he was still married. I do not accept that explanation. I infer that her real reason for saying no to the move was because Mr. Norkum's constant presence would have interfered with her relationship with Mr. Bostwick and with the lifestyle that she enjoyed.
- [119] I, therefore, conclude that there was no "bargain" between the parties that provides a juristic reason for the enrichment.
- [120] Ms. Fletcher next argues that her autonomy provides a juristic reason. She says that she had no financial security and was dependent upon Mr. Norkum's largess. He could and did terminate her salary on two occasions prior to the termination of the relationship. She says that because she assumed all of the risk, it would be unfair for her to have to return the benefit of the arrangement because she was the one who terminated the relationship.
- [121] In these circumstances, I do not consider Ms. Fletcher's autonomy to be a juristic reason. She willingly entered into the relationship and stretched it as far as she could in order to secure a regular salary and other benefits. That is not to say that she did not earn her keep. However, simply because Ms. Fletcher entered into a relationship that might be ended by either party is not a juristic reason for justifying enrichment.
- [122] Ms. Fletcher further argues that the best interests of the children is a public policy consideration applicable in the circumstances. She says that Mr. Norkum stood in the place of a parent figure. However, that is an argument which runs counter to Ms. Fletcher's other assertions. She has maintained that Mr. Norkum did not take on parental duties such as taking the children for medical appointments or other regular features of parenting. Other than acknowledging that Mr. Norkum provided her with salary and benefits that she used to support the children, Ms. Fletcher has distanced herself from the notion that Mr. Norkum was a father figure. It is beyond any doubt, that Ms. Fletcher considered Mr. Bostwick to be the father and parent to the twins. Mr. Bostwick was present at their birth. He maintained a regular (albeit secretive) presence which, after the parties' final separation, became a more formal and traditional role as a live-in parent.

- [123] In virtually every case where a custodial parent pays debt to another party, there will be an impact on the children. In the circumstances, that is not a factor that carries much, if any, weight. Accordingly, I conclude that the best interests of the children do not provide a juristic reason for Ms. Fletcher's enrichment.
- [124] I have considered the arguments put forward by Ms. Fletcher seeking to establish a juristic reason justifying her enrichment and Mr. Norkum's deprivation. I am unable to find any juristic reason justifying the enrichment.
- [125] I conclude that Mr. Norkum is entitled to damages for unjust enrichment as they relate to the renovations of Ranch Park Way. The renovations began in 2014. Some of the renovations were paid for directly to the respective trades by Mr. Norkum. At other times, Ms. Fletcher requested money to pay trades and Mr. Norkum had the funds deposited into her bank account.
- [126] Exhibits 6 and 17 set out the amounts related to the renovations. The amounts to be considered are \$597,455; \$58,750 and \$434,450, making a sum total of \$1,090,655. These are the amounts that have been shown to be paid specifically for renovations.
- [127] Ms. Fletcher says that if there are monies owing to Mr. Norkum, then she should have the benefits of some set offs. Those set offs include the benefit to Mr. Norkum of having a family life while Ms. Fletcher bore the brunt of the daily child rearing duties. She also oversaw the renovations and ultimately became the general contractor.
- [128] Part of the set off argument advanced by Ms. Fletcher regarding her role as the daily care giver for the children requires her to show that there was a domestic family relationship. That would for all intents and purposes require a finding that there was a common law relationship between the parties. Ms. Fletcher has resisted that notion throughout. She cannot have it both ways.
- [129] In all of the circumstances, it is apparent that Mr. Norkum supported Ms. Fletcher, her lifestyle and to some degree her children. However, the payments were as Ms. Fletcher has maintained - transactional in nature and not as the kind of support provided to a spouse or common law partner.
- [130] I have also considered and factored in Mr. Norkum's payments to accommodate Ms. Fletcher in the apartment while the renovations were being completed.
- [131] There were some other and additional payments associated with renovation requested costs from Ms. Fletcher and the costs of the design. Rather than engaging in an exercise of forensic accounting, I have taken the liberty of rounding off the renovation costs and am satisfied that Mr. Norkum paid for \$1.1 million of renovations. Ms. Fletcher has been unjustly enriched by that amount and she is to pay Mr. Norkum \$1.1 million.

The Trinidad Property

- [132] The Trinidad Property falls within the net cast by the resulting trust.
- [133] Mr. Norkum was responsible for the entire purchase cost. The purpose of the purchase was to accommodate their friends who attended Carnival. The only reason the Trinidad Property was placed into Ms. Fletcher's name was to take advantage of regulations respecting foreign ownership. It was not because Mr. Norkum intended to gift the property to her.
- [134] The parties wore wedding rings some of the time. I accept Ms. Fletcher's evidence when she says that the display of the rings was so that others would not view her as an expensive call girl. I accept her position that the rings were not intended to convey to each other an expression of long term commitment. That is an indication that Ms. Fletcher did not consider herself to be Mr. Norkum's spouse in any formal or legal sense - it was for appearance only. Therefore, I conclude that Ms. Fletcher cannot claim a half interest in the property on the basis that she was related to Mr. Norkum in the sense that she might have a family related interest.
- [135] Ms. Fletcher has not provided any convincing evidence to rebut the presumption of resulting trust. Ms. Fletcher has acknowledged that the property is subject to a resulting trust and that Mr. Norkum is entitled to half the value.
- [136] However, I conclude that because Ms. Fletcher did not contribute to the acquisition of the property, Mr. Norkum is entitled to full compensation in proportion to the contribution he made. I conclude, that even though the property was intended to benefit both parties' friends, there was no intention on the part of Mr. Norkum to give Ms. Fletcher a share of the ownership.
- [137] The property is beyond the jurisdiction of this Court. However, because it is in Ms. Fletcher's name, there is no need to make a declaration of ownership and the issue can be resolved in the manner that the parties have suggested.
- [138] There were additional costs incurred, including construction of a retaining wall and architectural fees. These were no more than ordinary costs incurred for the purposes of either maintenance or prospective improvements to the property. Mr. Norkum is not entitled to the return of these expenses.
- [139] This award can be considered as an assessment of unjust enrichment. Ms. Fletcher was enriched by the purchase of the property and Mr. Norkum has suffered a corresponding deprivation without a juristic reason for the enrichment.
- [140] The parties agree that any award be assessed as a monetary amount. Therefore, Mr. Norkum is entitled to recover his contribution of \$200,000.

Port Moody Properties and GAG Enterprises

- [141] Mr. Norkum says that he paid Ms. Fletcher other monies at her request that were not used in the renovations. He says that those monies were used by Ms. Fletcher to invest with Mr. Bostwick in hydra vac trucks through GAG Enterprises and the Port Moody properties.
- [142] Although Mr. Norkum transferred money to Ms. Fletcher close to when she invested in GAG Enterprises and the Port Moody properties, I am not convinced that Ms. Fletcher converted monies advanced to her specifically for renovations to her own personal investments. Mr. Norkum was generous to a fault. There were times when Ms. Fletcher asked for money or asked for expensive gifts. At times, Mr. Norkum complied. In those circumstances, I infer that Mr. Norkum wanted to keep Ms. Fletcher content and the payment of money was one way of accomplishing that. It was either a gift or a payment for Ms. Fletcher's services. Once the money was paid, it was not for Mr. Norkum to dictate how Ms. Fletcher was to spend it. I, therefore, conclude that Mr. Norkum has no interest in those additional payments that he made to Ms. Fletcher.

Monthly Salary

- [143] Mr. Norkum caused a salary (and health benefits) to be paid for Ms. Fletcher's time, services and companionship. When the relationship between the parties had fractured, Mr. Norkum terminated the payments. This was akin to an employer/employee relationship where salary and benefits are provided. The parties struck a bargain. Ms. Fletcher was to be available when Mr. Norkum called. There is no evidence to suggest that she failed to carry out her part of the transaction.
- [144] This was an agreement which in artful terms was described as "pay for play". Both parties performed their ends of the bargain. There is no basis upon which Mr. Norkum is entitled to a repayment or a refund. His claims for the salary paid and benefits provided to Ms. Fletcher are dismissed.

Personal Items - the Conversion Claim

- [145] Mr. Norkum seeks the return of a number of items (excluding the hot tub) that he says were his and now remain at Ranch Park Way. Ms. Fletcher does not take issue with some of the items claimed. It is only with respect to the remaining items that a decision is required.
- [146] Ms. Fletcher testified that one of the bedroom sets was purchased for her daughter's bedroom. The other was for the guest bedroom. I accept Ms. Fletcher's evidence that one bedroom set was for her daughter. I infer that Mr. Norkum treated that purchase as a gift. Accordingly, that bedroom set shall remain with Ms. Fletcher.
- [147] I accept that Mr. Norkum paid for all of the other items in dispute. His intention was to purchase the items so that both parties would use and enjoy them. The joint use and enjoyment is no longer possible.

[148] A practical way of resolving this issue is for the parties to simply divide the remaining items. However, if the parties are unable to agree, then the items are to be sold and the proceeds evenly divided. If an agreeable division is impracticable, then the items shall be put up for sale within 30 days and the parties shall have joint conduct of sale. The net proceeds shall be divided equally.

Costs

[149] The parties have requested that any decision on costs be deferred until after this decision. Either party is at liberty to set the matter down for a costs hearing within 60 days.

Summary

[150] Mr. Norkum shall receive damages with respect to the purchase of the Trinidad Property (\$200,000) and the renovations to Ranch Park Way (\$1.1 million), totalling \$1.3 million.

[151] The personal items shall be sold with the parties having joint conduct of sale, and the net proceeds shall be divided equally.

[152] All other claims are dismissed. Costs shall be dealt with following a further hearing.

"S.D. Dley J."

DLEY J.

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