

CANADA / JUDGMENT

## Rai v. Rai

2025 BCSC 2158

### COURT

Supreme Court of British Columbia

### DECIDED

31 October 2025

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2025 BCSC 2158 Rai v. Rai

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Rai v. Rai,

2025 BCSC 2158

Date: 20251031

Docket: S231881

Registry: New Westminster

Between:

Gurvinder Singh Rai and

Gurwinder Kaur Rai

Plaintiffs

And

Manjit Kaur Rai

### Defendant

Corrected Judgment: The text of the judgment was corrected at paragraphs 148, 151, 157 and 161, where changes were made on December 19, 2025.

Before: The Honourable Justice Norell

Reasons for Judgment

Counsel for the Plaintiffs:

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A. Paranagama

Counsel for the Defendant:

A. Randhawa

Place and Dates of Trial:

New Westminster, B.C.

April 7-11, 14-17, and 22, 2025

Place and Date of Judgment:

New Westminster, B.C.

October 31, 2025

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## Overview

- [1] This action concerns a dispute among family members over the ownership of a residential property in Surrey, BC (the "Property"). The plaintiffs, Gurvinder Singh Rai and Gurwinder Kaur Rai, are husband and wife. The defendant, Manjit Kaur Rai, is the mother of Gurvinder Singh Rai. As all the parties share the same last name, for clarity and without intending any disrespect, I will refer to them either by their first names or as the plaintiffs or defendant, as applicable.
- [2] The Property was purchased in June 2015 for \$625,000. Title was registered in the names of the plaintiffs and defendant as joint tenants. The purchase was financed by a mortgage (the "Mortgage") with TD Canada Trust Bank ("TD Bank").
- [3] The plaintiffs seek a declaration that the defendant holds her registered interest in the Property in trust for them. The pleadings allege an express trust, in the alternative a resulting trust, and in the further alternative unjust enrichment and the remedy of a remedial constructive trust. However, in closing submissions, the focus was on a resulting trust and to a lesser extent unjust enrichment. The plaintiffs seek an order that the defendant transfer her registered interest in the Property to them.
- [4] The defendant denies that she holds her registered interest in the Property in trust. She asserts that she is the legal and beneficial owner of that interest, and the plaintiffs have not met the burden on them to displace the presumption of indefeasible title. She counterclaims for a declaration that she is the legal and beneficial owner of a 1/3 interest in the Property. She claims occupation rent from the plaintiffs for their exclusive occupation of the Property from September 2017 to date, and an order that the Property be sold pursuant to the Partition of Property Act, R.S.B.C. 1996, c. 347.
- [5] Much of the dispute centres on whether the inclusion of Manjit's name on title was gratuitous such that a resulting trust may arise. The plaintiffs say that Manjit did not make any contribution to the purchase price, or to the ongoing maintenance of the Property, and that before and after the purchase of the Property, they provided substantial financial support to Manjit and her husband Sodagar Rai. Manjit says that she contributed value to the purchase of the Property by being a covenantor on the Mortgage, and that before and after the purchase, the finances of the extended family were shared, and she contributed both directly and indirectly to the purchase and maintenance of the Property.
- [6] The parties disagree whether the plaintiffs would have qualified for financing without adding Manjit to title and as a covenantor. The plaintiffs say that they entrusted Rajvinder Hundal, Gurvinder's sister and Manjit's daughter, with all arrangements for the purchase, and obtaining the Mortgage. Rajvinder was their real estate agent and dealt with Mr.

Masood, the mortgage specialist at TD Bank. Gurvinder says that Rajvinder informed him it was necessary to add Manjit's name on title to qualify for the Mortgage, but told him not to worry, it was still the plaintiffs' Property, and Manjit was holding it for the plaintiffs.

Gurwinder says that both Rajvinder and Manjit told her this. Rajvinder denies this and any involvement in obtaining the Mortgage. Manjit denies any such conversation and says that she and Gurvinder discussed that they were buying the Property together, and this is why she was on title.

- [7] The plaintiffs allege that despite that they were told by Rajvinder that Manjit's income was required to obtain financing, that information was wrong, and they would have qualified on their own. They called Mr. Masood, who submitted the application for the Mortgage, as a witness. The plaintiffs also called an expert, Mr. Varun Chaudhry, who is a mortgage broker. After a voir dire, I permitted Mr. Chaudhry to testify. Mr. Chaudhry opined that it is highly likely the plaintiffs would have obtained financing without adding Manjit on title and as a covenantor.
- [8] In 2019, Manjit severed the joint tenancy. Manjit claims no recollection of this.
- [9] For the reasons that follow, I find that Manjit does hold the Property on a resulting trust for the plaintiffs. In the alternative, I find that Manjit has been unjustly enriched by being placed on title and would order the remedy of a remedial constructive trust. In either case, I conclude that Manjit must transfer her interest in the Property to the plaintiffs after her name is removed from the Mortgage. Manjit's counterclaim is dismissed.

### Credibility and Reliability of Evidence

- [10] The court can accept all, some, or none of the evidence of a witness, or attach different weight to parts of their evidence. In assessing the credibility and reliability of evidence, I am guided by the factors and approach in *Bradshaw v. Stenner*, 2010 BCSC 1398 at paras. 186-187, *aff'd* 2012 BCCA 296 leave to appeal to SCC *ref'd*, 35006 (7 March 2013). The factors include: the ability and opportunity of a witness to observe events; whether the witness' evidence is consistent or inconsistent with other independent evidence; whether the witness changes their evidence or has said something different on a previous occasion; whether the evidence seems reasonable or unlikely; and any motive to shade evidence or lie. The court considers whether the evidence is in "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": *Faryna v. Chorny*, 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354 at 357.
- [11] The main witnesses at trial were the parties and Rajvinder. I have concerns regarding the credibility of parts of all the parties' and Rajvinder's evidence. I find that some of the documents created and provided to the TD Bank to obtain financing were false. Each now distances themselves from those documents. Their evidence often repeated the evidence and arguments of those who are aligned with their position. Upon further questioning it

became clear that this was inadmissible hearsay of which they had no personal knowledge. The parties testified through an interpreter. They all have some ability to read and understand English but did not feel it was sufficient to testify. I note this first because I have considered the possibility of nuances being lost in translation although I do not find that is likely, and second because all of them at some point used this as part of their reasons to distance themselves from documents or previous evidence.

## Legal Framework

[12] As the plaintiffs argue that the registered title to the Property does not reflect the beneficial ownership, and the defendant argues that it does, the indefeasible title provisions of the Land Title Act, R.S.B.C. 1996, c. 250, are relevant. Section 23(2) of that Act states:

s. 23(2) An indefeasible title, as long as it remains in force and uncanceled, is conclusive evidence at law and in equity, as against the Crown and all other persons, that the person named in the title as registered owner is indefeasibly entitled to an estate in fee simple to the land described in the indefeasible title, subject to the following: ...

[13] This sub-section creates a presumption that the registered title accurately reflects actual ownership: *Mac v. Mak*, 2016 BCSC 1140 at para. 107, *aff'd* 2017 BCCA 115.

[14] In *Suen v. Suen*, 2013 BCCA 313 at para. 34, the Court discussed three situations in which the presumption of indefeasibility may be rebutted:

(i) the operation of a resulting trust which may be inferred where no value is given for a legal interest;

(ii) the operation of an agreement between the parties which is contrary to the registered legal title; or

(iii) taking into account the underlying equitable interests between the parties (e.g. considerations that arise in claims for unjust enrichment).

[15] A presumption of a resulting trust can arise where an owner of property gratuitously transfers property to another: *Suen* at para. 35; *Freeland v. Farrell*, 2022 BCCA 99 at para. 45. In such situations, the law "generally presumes that the grantor intended to create a trust rather than make a gift": *Kerr v. Baranow*, 2011 SCC 10 at para. 19; *Freeland* at para. 46. A purchase money resulting trust is a type of resulting trust where a party uses their money to purchase property, and that property is put in another party's name, or in the joint names of the purchasing party and the other party: *Swanstrom v. Wuest*, 2018 BCSC 2299 at paras. 44-45; *Rascal Trucking Ltd. v. Nishi*, 2013 SCC 33.

- [16] For a resulting trust to arise, the transfer to or purchase of property in the other party's name, must be gratuitous: Suen at para. 36. If property is transferred, or purchased in the other party's name for value, a resulting trust does not arise. Whether value was given is a question of fact to be determined on the evidence in each case: *Bajwa v. Pannu*, 2007 BCCA 260 at para. 16.
- [17] In considering whether a resulting trust has arisen, the actual intention of the transferor at the time of the transfer is the governing consideration: Suen at para. 36, citing *Kerr* at para. 18; *Pecore v. Pecore*, 2007 SCC 17 at paras. 43-44; *Freeland* at para. 18.
- [18] When determining the intention of the transferor, all the circumstances, both direct and circumstantial, at the time of the transfer are considered. The circumstances may include events subsequent to the transfer if relevant to the transferor's intent at the time of transfer, but such evidence will be reviewed critically: *Namdarpour v. Vahman*, 2019 BCCA 153 at para. 40. This is to guard against evidence "that is self-serving or that tends to reflect a change in intention": *Pecore* at para. 59. The court "must consider if the transferor had any rational purpose for the transfer other than a gift": *Fuller v. Harper*, 2010 BCCA 421 at para. 49.
- [19] If the judge is unable to reach a conclusion about the transferor's actual intention, then the presumption will operate: *Namdarpour* at para. 40; *Kerr* at para. 20; *Pecore* at paras. 27-28. The presumption of a resulting trust can be rebutted. The burden of proof then shifts to the party opposing the presumption to rebut it on a balance of probabilities by showing that a gift was intended: Suen at para. 38; *Pecore* at para. 43; *Freeland* at para. 47.

## Issues

[20] The issues for determination are:

- a) Issue 1: Was the registration of Manjit on title gratuitous?
- b) Issue 2: If so, what was the plaintiffs' intention when registering Manjit's name to title; or if that cannot be determined, has Manjit rebutted the presumption of resulting trust?
- c) Issue 3: Have the plaintiffs established an unjust enrichment of Manjit?

[21] The pleadings raise other claims and issues, but given my determinations on the issues above, I do not need to address them.

## Evidence

### Living Arrangements

[22] The parties were all born and raised in India. Gurwinder, Gurvinder and Rajvinder are now in their 40's. Manjit is in her 60's.

- [23] Gurwinder immigrated to Canada in 2000. She and Gurvinder were married in India in 2002 and Gurvinder immigrated to Canada later that year. The plaintiffs have four children between the ages of 12 and 21. Manjit, Sodagar, and Rajvinder immigrated to Canada in 2006 after being sponsored by the plaintiffs.
- [24] Soon after Manjit, Sodagar, and Rajvinder immigrated, the plaintiffs purchased their own home (the "7911 Property"). The plaintiffs, their children, Manjit, Sodagar, and Rajvinder moved to that property. In about 2007, Rajvinder married and moved to live with her husband. In 2009 or 2010, the plaintiffs sold the 7911 Property and purchased a different home (the "8076 Property"). The plaintiffs, their children, Manjit, and Sodagar moved there. This is the home they were living in at the time the Property was purchased in June 2015. The plaintiffs had intended to move into the Property right away after the purchase, but decided to have renovations done first, so they rented out the Property for about six months. In June 2016, the plaintiffs, their children, Manjit and Sodagar moved to the Property.
- [25] In September 2016, there was a family altercation (the "Incident") that marked the end of the parties' relationship. Manjit moved out of the Property the next day and lived with Rajvinder and her family. Sodagar remained living in the Property for a few months. Following this, Manjit and Sodagar rented a suite and have lived there since.

### Relationships Between Family

- [26] Gurvinder said little about the relationships between family members, other than with respect to financial arrangements, which are described later.
- [27] Gurwinder described her relationship with Manjit as being Manjit's servant. Gurwinder did all the cooking and cleaning for the household, including the laundry and ironing for Manjit and Sodagar. Sodagar drank a lot of alcohol, and when Gurwinder was not home, Sodagar was loud, and the children were scared. Sodagar and Manjit argued a lot. When Gurwinder occasionally worked outside the home and needed help with the children, her sister assisted and not Manjit. Gurwinder also looked after Rajvinder's children at the parties' home because Rajvinder worked full time. Gurwinder "never said anything extra" to Rajvinder because if she did, Manjit would be upset. Gurvinder and Rajvinder had a very good relationship.
- [28] Navpreet Rai is the plaintiffs' oldest child. She testified regarding the parties' relationships and the Incident. Her evidence described family relationships and roles that were similar to those described by Gurwinder. Her grandmother Manjit did not provide childcare or do housework. Her parents did everything for her grandparents. She had an unhappy relationship with her grandmother and Rajvinder. Manjit arguing with her parents was a regular occurrence.
- [29] Manjit testified she got along well with and was close to the plaintiffs' children. She spent time with the grandchildren, bathed them when they were young, oiled their hair, and massaged them. Manjit did not testify about any household chores she did. Her relationship

with the plaintiffs was good as well. She said that "minor things" happened in the household all the time. She denied that she was controlling of Gurwinder. She testified that she never thought "she would see these days", where the plaintiffs will not let her see her grandchildren, and does not know what happened in 2016.

- [30] Rajvinder testified that before the Incident she had a good relationship with Gurvinder, but he would always get angry at small things. Gurwinder was like a friend. Sometimes Gurwinder looked after her children.
- [31] The facts of the Incident in September 2016 are in dispute. The persons involved all blame one another. It is not necessary to make any determinations of what happened or assign blame. The Incident is only relevant to the nature of the relationship between the parties, why it ended, and how it may now affect their positions and evidence in this lawsuit.
- [32] It is sufficient to say that there was an argument, or arguments earlier that day between Manjit and the plaintiffs. The parties disagree what the argument(s) were about or the intensity of them. The plaintiffs say that it was because Gurwinder was accompanying Gurvinder to a party for the child of a friend, and Manjit thought she should be going instead of Gurwinder. Manjit says the argument was about Gurwinder telling her late that she was going out when there were tasks to be done for the children and when Manjit had errands to do. At some point, Rajvinder was contacted regarding the dispute. After the plaintiffs had left to go to the party during the evening, Rajvinder arrived at the family home, and Navpreet, who was 11 years old at the time, was unfortunately brought into the dispute by Rajvinder and Manjit. Rajvinder told Navpreet that she should side with Manjit and tell her parents that they are wrong. Navpreet says she was physically grabbed and scratched by Rajvinder. Rajvinder denies this. Navpreet was scared and telephoned her father in tears. That resulted in Rajvinder taking the phone and an argument between her and Gurvinder. The plaintiffs returned home shortly after this, as Rajvinder, her husband, and their young child were leaving. A further argument ensued between the adults, with Gurvinder slapping Rajvinder, and Manjit slapping Gurvinder several times. The argument took place outside in the driveway and indoors. The police attended.
- [33] Manjit left the home that evening with Rajvinder. Manjit and Rajvinder assert that Gurvinder told Rajvinder to take their mother away and she could not live there any longer. Gurvinder asserts that Manjit said she was not living there anymore and left on her own. Manjit returned the next day to gather her things. Gurvinder testified that he asked his mother to forget about the argument and to return to live with them. She refused. Manjit denies this. After the Incident, Manjit visited the grandchildren a few times. Since the Incident, there has been little contact between the two factions of family.

## Finances Between Family

- [34] Gurvinder testified since arriving in Canada in 2002, he worked as an employee truck driver. In late 2015 or the beginning of 2016, he bought his own truck and became self-employed. Gurvinder's tax documents show income of:
- a) 2013: \$77,538;
  - b) 2014: \$74,466; and
  - c) 2015: \$75,096.
- [35] Gurvinder testified that he has supported his parents. He and Gurwinder paid for the cost of his parents and Rajvinder to immigrate to Canada. His parents were not working in India at the time they immigrated, and they did not bring any money with them. Once in Canada, his father did not work because he is disabled from alcohol abuse and complications. His mother worked, but very little. Every year she travelled to India or England. He paid all her travel expenses. He paid for Rajvinder's education to become a realtor and take an insurance course. Rajvinder agreed that Gurvinder paid for her education in Canada.
- [36] Gurwinder testified that she graduated high school in India but did not work in India. She has worked a little in Canada. While Manjit and Sodagar lived with them, she and Gurvinder paid for the mortgage, electricity, gas, and utility bills. Manjit and Sodagar did not make any contributions to household expenses. Gurwinder was the person who mainly bought groceries for the household. To her knowledge, Manjit never purchased groceries, but if Manjit needed anything extra for herself, she would purchase that. Manjit worked little prior to 2015. She also spent about six months or less, every year in England and India. Gurwinder looked after Sodagar while Manjit was away. She and Gurvinder would send Manjit money for her expenses when she was in India. Gurwinder's tax documents show income of:
- a) 2014: \$8,680 (\$2,880 in T4, \$2,400 in UCCB, and \$3,400 in EI); and
  - b) 2015: \$20,098.
- [37] Manjit testified that when Gurvinder immigrated to Canada, he sent some money to India. Gurvinder partially paid for her, Sodagar, and Rajvinder to immigrate. They only brought a little money with them to Canada. Once in Canada, Sodagar worked for about a year until he became sick. After that, Manjit started working. Since 2012, Manjit has worked seasonally for about six months per year for a farm and then receives employment insurance ("EI"). She denied that her expenses were more than her earnings. When she travelled, she went for at most 1.5 months. She took one of the plaintiffs' daughters with her on a trip to England. With respect to household expenses, everything was joint, and what was hers was theirs and what was theirs was hers. Manjit's tax documents show income of:
- a) 2010: \$3,861;
  - b) 2011: \$3,000;

- c) 2012: \$13,030 (\$10,446.80 T4, plus \$2,583 EI);
- d) 2013: \$14,468 (\$8,528 T4, plus \$5,940 EI);
- e) 2014: \$14,348 (\$13,040 T4s, plus \$1,308 EI); and
- f) 2015: \$12,065.

- [38] All three parties referred to bank and credit card records. The plaintiffs have a joint CIBC bank account (the "Joint CIBC Account") and a joint TD account (the "Joint TD Account"). Manjit testified that she was not saving much because she and Sodagar were paying for the "water, electricity, all of those bills" for the home. Contrary to this, the Joint CIBC Account and the Joint TD Account statements show that the mortgage payments, property and utility taxes, insurance, utilities, and credit card invoices, both before and after the purchase of the Property, were paid by the plaintiffs from their accounts.
- [39] The parties had a joint RBC credit card (the "Joint RBC Card"). Gurvinder is the main card holder, and he obtained a card for Manjit to use. The Joint RBC Card invoices from March 2015 to October 2016 show the purchases made by each of the parties, and who paid the monthly invoice. For that 1.5 year period, except for one payment, Gurvinder was the person who paid all the credit card invoices. Manjit paid one invoice for \$2,360.81 on June 15, 2015. I note that this is the day of the closing on the Property, when the plaintiffs had to pay another \$23,611 to complete the purchase after mortgage financing.
- [40] Manjit testified that she paid expenses for the 8076 Property and the Property, for example, house insurance. The Joint RBC Card statements show that charges for house insurance were made on Manjit's card in 2014 and 2015, and it was done through Optimum Insurance where Rajvinder had worked. However, the invoices for those charges were paid by Gurvinder. Similarly, car insurance, airline tickets, and what are likely groceries are shown as being billed on Manjit's card. However, all those charges were paid for by Gurvinder. Manjit said that the plaintiffs used her card, and it didn't matter because "we were all one".
- [41] Manjit and Gurwinder had a joint RBC account (the "Joint RBC Account"). This was initially in Manjit's name only, but at some point, Manjit added Gurwinder's name. This was done to enable Gurwinder to do banking for Manjit, because Manjit did not drive. Gurwinder testified that Manjit seldom asked her to withdraw money from that account, and usually it would be to get \$100 worth of smaller bills. She was not permitted to take funds from that account without Manjit's agreement, and she never did. Manjit testified that she deposited her wages and any government benefits into this account. If the plaintiffs needed to make any payments, and if there was not enough money in their accounts, Gurwinder would withdraw from this account. Gurwinder did not need to ask her permission. Gurwinder would let her know that she had done that. Sometimes Gurwinder took cash from the account at the request of Manjit for Manjit's use. Manjit testified that if there is any large withdrawal, she did not make it. Manjit said that it never crossed her mind that they were separate, or of keeping anything for herself.

- [42] The bank print-out for this account describes most withdrawals as "cash withdrawals" but there are many that have cents in them. I find it is unlikely those withdrawals were for cash. Although Manjit testified that these withdrawals were to pay family expenses, in my view, Manjit could not recall what these withdrawals were for, and there is no indication on the bank print-out what they are for. However, bank documents show that on June 15, 2015, Manjit withdrew \$3,000 from her TFSA, which was then deposited into the Joint RBC Account, and on the same day, \$2,360.81 was used to pay the Joint RBC Card invoice. This is also marked as a "cash withdrawal". This is the payment referred to above that is shown as being made by Manjit. Manjit testified that Gurvinder told her she needed to pay the bill. The bank print-out also shows that on September 22, 2015, Manjit withdrew \$1,000 from her TFSA, which was then deposited into the Joint RBC Account, and that on September 28, 2015, a \$1,500 transfer from that account was made to the plaintiffs' Joint CIBC Account.
- [43] To the extent they overlap in time, I have compared the Joint RBC Account and Manjit's TFSA statements, with the plaintiffs' Joint CIBC Account and Joint TD Account statements. Other than the two transfers above, I cannot correlate any withdrawal from the Joint RBC Account to a deposit into either the Joint CIBC Account or the Joint TD Account. No other transfers were identified by the parties. There are periods of time where the statements do not overlap, prior to the purchase of the Property, where there are withdrawals from the Joint RBC Account. Most are traceable or identifiable, but some are not. For example, there are regular withdrawals (described as "special deposit") which are transfers to Manjit's TFSA. Some withdrawals can be traced to payments on a credit card that was solely in Manjit's name (discussed below). Some withdrawals are likely cash, for example \$20, or \$150. However, there are some withdrawals labelled as "cash withdrawals" that are likely payment of expenses because they end in cents. They could be personal expenses of Manjit, or of Sodagar, or they could be household expenses, but Manjit has not proven what they are. After the Property was purchased, there are also "cash withdrawals" ending in cents, from the Joint RBC Account that do not correlate with any deposits to the plaintiffs' accounts. Between July and October 2015, there are eight withdrawals for a total of \$2,736.50. Thereafter, there are no such withdrawals for 10 months until a withdrawal of \$796.37 on August 15, 2016. Manjit has not proven what these were for. They could be her personal expenses, or Sodagar's expenses, or household expenses. They are not mortgage, insurance, or property and utilities tax payments for the Property because those were paid from the plaintiffs' accounts.
- [44] Manjit also had a credit card in her own name with RBC (the "Sole RBC Card"). Invoices for that account from December 2013 to September 2016 show that there is little charged to this card, usually less than \$100 per month. Manjit denied these charges were for her own personal expenses. She said she used it for "joint expenses. Everything was joint." Bank stamps show that Gurvinder paid some of those invoices, and the Joint RBC Account shows that Manjit paid some.

- [45] Manjit testified that when she started working, she also opened a TFSA (the "TFSA"). Bank documents show that there was a little saved, about \$100 per month, before the two withdrawals discussed above. Manjit said she could not save any money when she was working because "all expenses were joint" and "everything was spent on their home". She agreed that if she and Sodagar had not been living with the plaintiffs, they would have had to pay for rent and other living expenses.

## Purchase of the Property

- [46] Gurvinder testified that in 2015, he saw the Property was for sale. He called the realtor and told him that Rajvinder was his realtor. He and Rajvinder met with the selling realtor who told them that the Property was owned by the Canadian Ramgarhia Society (the "Society"), no commission would be payable to either realtor, and there would be no negotiation on the price. After that, he and Gurwinder viewed the Property and decided to purchase it. He asked Rajvinder to prepare an offer to purchase and she did so. Gurvinder made an offer on April 21, 2015. On April 22, 2015, Gurvinder and the Society agreed that Gurvinder would purchase the Property for \$625,000 cash with a deposit of \$20,000. The agreement was subject to the approval of the Society, and that subject was removed on May 17, 2015. It was a term of the contract that Gurvinder had the right to assign the contract.
- [47] Gurvinder testified that he intended that Gurwinder would be on title to the Property with him, but not Manjit. Prior to completion, he talked at home that he was purchasing the Property, but he never told Manjit that he wanted her to be on title or that he intended to make a gift to her of any interest in the Property. He testified that "there was never any talk about a share." He denied that from the beginning, Manjit was going to buy the Property with him. Manjit never asked that title be transferred to her.
- [48] Gurvinder paid the deposit of \$20,000. Bank records show that the \$20,000 came from the Joint CIBC Account. This was funded by \$18,000 Gurvinder had taken from a line of credit he and Gurwinder had along with their mortgage on the 8076 Property, plus money they already had in their Joint CIBC Account. Another \$23,611 down payment was required to complete the purchase in addition to the Mortgage financing. Bank records show that the \$23,611 came from another \$15,000 taken from the same line of credit on May 21, 2025, and was deposited into the plaintiffs Joint CIBC Account. The remainder came from already existing funds in the Joint CIBC Account. Manjit did not make any contribution toward the deposit or the down payment.
- [49] Gurwinder testified that she learned that the Property was for sale from Gurvinder. He told her that he had looked at the Property and then they looked at it together. She does not recall if Manjit went with them. Gurvinder told her that they were going to purchase the Property, that there would be room for parking, and he was going to speak to Rajvinder. Gurvinder testified that she did not have any discussions with Gurvinder as to whose names would be on title, but "usually whenever he purchased property, my name was on it." Her name was on the title of the 8076 Property.

- [50] Later, Rajvinder came to their home and said that Manjit's name would be added to title. Both Rajvinder and Manjit said that "it is your property; it will remain yours" and that Manjit's name would be on title "just to hold it." Gurwinder does not know what discussions took place between Gurvinder and Rajvinder regarding the purchase or the Mortgage, or why Manjit's name would be on title. Neither she nor Gurvinder in her presence, ever told Manjit that they were giving her a share of the Property, nor did Manjit in her presence, ever ask for a share of the Property. The first time she came to know that Manjit was claiming a share was years later, when the Mortgage was up for renewal.
- [51] Manjit testified that Gurvinder told her there was a property close to them for sale. She understood Gurvinder had already viewed the Property. Gurvinder said to her that "we" are buying the Property. She said to him that they were not meeting their expenses as is, and it was just the two of them working - she and him - and asked how they would afford the expenses. Gurvinder told her that the Property was already rented, and they would not have to make much payment. Gurvinder told her that they were both working, money was not being saved, and this way Manjit would be able to save money.
- [52] In cross-examination, Manjit's evidence changed over questioning. When asked if Gurvinder said he will give her a share in the Property, she said, "That is what he said to me. Mom, we'll buy a property because all your money is being spent, my money is being spent, we are not able to save, this is the only way to do that." When asked again whether Gurvinder said he would give her a share in the Property, she replied, "When he was saying, Mom we will buy the property together, that means joint property." When asked whether they discussed what share she would get, she replied "What I felt was that it was us, the two of us, that were going to buy it." Later, when asked if she discussed with Gurvinder what that would mean if she were on title, she said, "That is how he said it - that we will buy it together, it will be joint property, that you will be able to make something as well, because now that you are getting older, you need something. And that is what I felt as well; that I needed something for my grandchildren, my son's children and my daughter's children because I wasn't being able to save anything." She said that Gurwinder was not initially one of the buyers. Gurvinder later told her he was going to add Gurwinder's name to title, and Manjit said she was agreeable to that. She knew that only the plaintiffs were on title to the 8076 Property.
- [53] Manjit was referred to her examination for discovery transcript on October 12, 2021. She confirmed she had to tell the truth at the examination, and that she had an interpreter. Counsel read the first question which was:
- Q. 57: And as you're claiming one-third ownership, you also claim that you contributed - are you claiming that you contributed one-third to the down payment?
- [54] Before being able to read the answer, Manjit interjected, saying that she didn't put in one third share for the payment, but she was "bringing everything to the home and giving it to them. If all of that was added, then it would be one third". The excerpt from the transcript eventually read to Manjit is:

Q. 57: And as you're claiming one-third ownership, you also claim that you contributed - are you claiming that you contributed one-third to the down payment?"

A: At that time we had no communication of how much the share was.

Q. 58: But did you contribute one-third to the down payment?

A: At that time, there was no talk about how much share (sic). Everyone was together at that time.

Q. 59: Okay. So as of 2015, May, there was no talk about how much you would be entitled to? Is that your position?

A: There was no communication when the property was purchased.

Q. 60: So, in fact, your entitlement was not even discussed; is that correct?

A: When? When it was purchased?

Q. 61: Yeah.

A: Should I answer?

Q. 62: Yeah.

A: At that time it wasn't, like, we're putting so much share in. It wasn't like that.

Q. 63: Yes. So in other words, no entitlement on your part was not even discussed?

A: When are you asking about? When the property was purchased?

Q. 67: Yeah.

A: At that time, we were all together.

[examination paused for technical difficulties]

Q. 66: So it is your position that in May 2015 when the property was purchased, your entitlement was not even discussed or there was no - nobody discussed about any entitlement on your part?

A: No.

Q. 67: So is that correct? Yes?

A: Yes.

[Emphasis added.]

[55] When Manjit was asked whether she was asked those questions and gave those answers, she said that she did not "fully properly remember now". She said that she and Gurvinder "talked about the Property, didn't talk about the share, but if there is two people buying it, the share would be accordingly." Further, Manjit stated "Why would I need to talk about it, he should know that if we are buying it joint then I have a share in it." When it was put to Manjit that she never asked Gurvinder to give her a share, she answered "When would I ask for it, when

he just went ahead and filed these papers? I didn't do anything for two or three years. I was waiting that he would talk about it, and then he sent these papers." She was referring to papers she received when she was in India near the onset of the COVID pandemic, which are discussed later.

- [56] When Manjit was asked to agree that she was only on title because Rajvinder told Gurvinder that she needed to be, Manjit repeated that Gurvinder said "Mom we are going to buy this together." When she was asked to agree that she never gave that evidence at her examination for discovery, she replied that "Sometimes you don't understand, your brain doesn't work to say everything, and that maybe he will sit down and talk." Manjit testified that she did not tell Gurvinder that she was holding the Property for him. She was never present when Rajvinder said words to the same effect to Gurvinder.
- [57] Rajvinder testified that before the contract for purchase and sale was signed, Gurvinder told her that he wanted to buy a property with Manjit. However, the subsequent contract of purchase and sale she drew up was in Gurvinder's name only. She knew that the 8076 Property was in the name of the plaintiffs. As will be discussed below, Rajvinder denied any involvement in the obtaining of the Mortgage or discussion about Manjit holding her interest in the Property for the plaintiffs.

#### Obtaining the Mortgage

#### TD Bank Mortgage File

- [58] Before addressing the oral evidence regarding the Mortgage, it is helpful to describe some of the documents in the TD Bank Mortgage file. This is not Mr. Masood's file. Mr. Masood said that he destroys his file once a mortgage is funded.
- [59] First, the file contains employment letters concerning Gurwinder and Manjit. They are: (a) a letter dated May 20, 2015, from 0970921 BC Ltd., signed by its director, stating that Gurwinder has been a full-time employee of since March 30, 2015, and it is anticipated that her employment will continue in the near future. In handwritten notes someone, likely a person in the loans department at TD, has written that the employer was contacted and confirmed the information; (b) a letter dated May 20, 2015, from 0965022 B.C. Ltd. signed by the company's accountant confirming that Gurwinder has been employed as a kitchen helper since May 1, 2015, and is a permanent part-time employee working a minimum of 24 hours per week; and (c) a letter dated April 2, 2015, from Sanghera Farm Ltd. signed by its director, confirming Manjit's employment since July 2012 and that her job is secure.
- [60] Second, the file contains Gurvinder's and Manjit's notices of assessment for 2013 and 2014.
- [61] Third, the file contains a residential tenancy agreement (the "RTA") between Gurwinder and a person called Parampreet Pannu for the 8076 Property for a one-year period commencing July 1, 2015, and signed by Gurwinder and the tenant on May 21, 2015. I will return to the RTA, because I conclude it is a false document.

- [62] Fourth, the file contains a gift letter (the "Gift Letter") dated May 21, 2015, that is on a TD Canada Trust form, except it is filled out incorrectly. It states that Gurvinder and Gurwinder are making a gift of \$15,000 to Rajvinder, but it is signed by Rajvinder as the person giving the money and signed by Gurvinder and Gurwinder as the persons receiving the money. I will return to the Gift Letter, because I conclude it is also a false document. The plaintiffs and Rajvinder agree that Rajvinder did not gift \$15,000 to the plaintiffs.
- [63] Fifth, there are a few pages of bank statements for the plaintiffs' Joint CIBC Account showing the transfers in of the \$18,000 on May 1, 2015, with a handwritten note "transfer from own acct", and a \$20,000 withdrawal the same day with a handwritten note "draft initial deposit". The statements also show the \$15,000 deposit on May 21, 2015, with a handwritten note, "Gift Letter". Gurvinder testified that these are not his handwriting. There is a "To whom it may concern" letter from the CIBC dated May 29, 2015, stating "This is to certify that the transfer made on May/01/2015 for Gurvinder Rai was for 18000\$ transferred from his HPP PLC Account [account number] to his chequing account [account number]. Please review the attached transaction summary for both accounts."
- [64] Finally, the file contains a credit application form signed by Manjit which states that she is widowed and has no dependents and is employed as a berry picker. This is dated May 22, 2015, and her signature is witnessed by Mr. Masood. The file also contains a credit application form for the plaintiffs, but only the first page is in the file. The second page where they would sign is not in the file. The first page of the form appears to be completed in the same handwriting as for Manjit's form.
- [65] On May 23, 2015, Mr. Masood faxed all the above, and other documents to the loan department of TD Bank.
- [66] On May 26, 2015, the TD Bank advised Mr. Masood that the mortgage application was under review for "additional due diligence". Three days later, the Mortgage was approved. In between, there are several email communications between Mr. Masood and the TD Bank to obtain verification that the deposit and down payment were not borrowed and that there were sufficient funds to complete. The TD Bank was contacting the employers to confirm the employment information provided in the employment letters. There is a rental property worksheet in the file, and it appears from this that the TD Bank was aware that there was a \$42,000 line of credit in addition to the mortgage on the 8079 Property. That worksheet also shows that the TD bank calculated that the plaintiffs had about \$150,000 in equity in the 8079 Property after the line of credit was paid.
- [67] With that review of the TD Bank Mortgage file, I turn to the oral evidence.

## Gurvinder's Evidence

- [68] Gurvinder testified that he asked Rajvinder to obtain a mortgage and hire a notary because he has "some problem with reading the paperwork." He trusted her. She agreed to do so. Whatever paperwork Rajvinder asked him and Gurwinder to provide, he gave to her.

Rajvinder was the person who communicated with the mortgage broker [i.e. Mr. Masood] because Gurvinder was out of town for work. Gurvinder does not recall the name of the mortgage broker. He testified that he never had any direct communications with the mortgage broker, and he never met him. Either Rajvinder brought him documents from the mortgage broker or he might have gone to her home. He signed mortgage documents at the TD Bank.

- [69] Gurvinder testified that after he gave the paperwork to Rajvinder for the Mortgage, she told him that his income was not enough, and he will have to add Manjit's name to title and the Mortgage. He trusted Rajvinder but felt his income was enough to obtain the Mortgage without Manjit. He told this to Rajvinder. She told him that the mortgage broker told her the incomes were not enough. He told her to "go ahead do the paperwork and then we will see what happens." He didn't go and see a mortgage broker himself because he trusted Rajvinder.
- [70] Subsequently, Rajvinder telephoned him and said the documents were ready to sign, she had looked at everything and it was all fine, and all he had to do was go to the notary with Gurvinder and Manjit to sign the documents. Rajvinder told him that Manjit would be on title, and this was "just your mother" and "she is holding it for you" even if she is on title. There had been no talk of Manjit having a share of the Property. Rajvinder said to him, "Brother this is your property, this is your home, what difference does it make if mom's name is added to it?"
- [71] Gurvinder testified that other than his tax documents and possibly bank statements, he does not recall what he gave to Rajvinder, and he does not know what Rajvinder gave to the bank. He did not provide any documents directly to the bank. He does not recall the employment letters regarding Gurwinder or the credit applications. When asked if he was going to use rental income from the 8076 Property for income, he said he did not know about that, and only Rajvinder would know. When shown the RTA, he repeated that he does not know what Rajvinder gave to the bank, nor does he recall what documentation he gave to her. He recalls the name Parampreet Pannu. He said this person had a house for sale and Rajvinder and her husband bought that house, and Rajvinder is on title with her father-in-law. Gurvinder agreed that the Gift Letter has the signatures of him and Gurwinder, but then said he does not remember the document. When asked if he knew how this document came to be in the Mortgage file, he testified that "Wherever [Rajvinder] would ask me to sign, because she was educated and she was a realtor, so I had no idea what letter, or gift letter, whatever she attached, I just signed where she asked me to sign."

## Gurwinder's Evidence

- [72] Gurwinder testified that she does not know what discussions took place between Gurvinder and Rajvinder regarding the Mortgage. Nobody told her that she and Gurvinder would not qualify for a mortgage without Manjit. She has never met Mr. Masood. She signed mortgage documents at the TD Bank, and the bank employee she met was not Mr. Masood. She and

Gurvinder gave to Rajvinder whatever documents Rajvinder asked for. Rajvinder asked for her pay stubs and she gave them to her. She never took any documents directly to the bank. They trusted Rajvinder.

- [73] Gurwinder testified that she has no recollection of the employment letters and does not know if Rajvinder asked for them. She does not recognize the numbered companies. However, she had a full-time job packing bell peppers and she worked for a pizza shop in Langley as a kitchen helper for a short period of time. She tried working both jobs for a while, but it was hard with the children, so she quit the pizza job. She only worked at the pizza shop three or four times. I note that Gurwinder's pay from her full-time employment with the numbered company is shown as being consistently deposited to the plaintiffs' Joint CIBC Account. Gurwinder testified that she does not recall anything about the RTA but later said that Rajvinder asked her to sign the document "because she was the one who had all the documents prepared". She agreed that it was her signature on the RTA. They intended to rent the 8076 Property once they moved to the Property. Gurwinder identified her signature on the Gift Letter. Rajvinder told her to sign the document and she "just signed wherever I was told to. I didn't even look at it."

### Manjit's Evidence

- [74] Manjit testified that she learned that she was going to be on the Mortgage when Gurvinder asked her to obtain a letter from her employer. She denied that Rajvinder asked her to obtain the employment letter. I note that there was no explanation in evidence as to why the employer letter is dated April 2, 2015, almost three weeks before Gurvinder made an offer on the Property. Manjit testified that after that, the mortgage broker, Mr. Masood came to their home. The plaintiffs were at home at the time. She signed a credit application on May 22, 2015. When asked if she saw the plaintiffs sign similar forms, she said she just signed, and she doesn't know if their form was similar. When it was suggested that Rajvinder played a role in obtaining the Mortgage, she said "I don't know about that - about the Mortgage." She testified that she did not know about conversations between Gurvinder and Rajvinder, or the Gift Letter and said she had never seen it.

### Rajvinder's Evidence

- [75] Rajvinder testified that as a realtor, she assisted Gurvinder to purchase the Property. She talked to the other realtor and negotiated the purchase and drew up the contract for purchase and sale. She denied any involvement in assisting Gurvinder to obtain the Mortgage. Her only involvement is that Gurvinder asked her if she knew any mortgage brokers, and she gave him the name and telephone number of Mr. Masood. She knows Mr. Masood professionally, as mortgage brokers come to realtor meetings to introduce themselves to generate referrals. She denied that she contacted Mr. Masood directly. She agreed that she and her husband also see Mr. Masood at professional social events. Mr. Masood might have been to her home because he arranged their mortgage. They do not

discuss client's personal information with each other.

- [76] Rajvinder denied that she told Gurvinder that they would not qualify for a mortgage unless Manjit was added to title, or words to the effect of "Don't worry, she's holding it for you." Rajvinder agreed that she does not know if Manjit contributed to the purchase, but it was clear Rajvinder feels that her mother has an interest in the Property. She said that she knows her mother was working and sharing expenses "so indirectly she is paying everything". Rajvinder agreed that in August 2015, her husband became a licenced mortgage broker but said he did not work as one.
- [77] Rajvinder agreed that she signed the Gift Letter. Gurvinder obtained the document and asked her to sign, and she did. The only part of the Gift Letter that is in her handwriting is her signature and address. She said that she was "always fearful of him", and when Gurvinder said she had to sign, she signed. She "didn't think much." Rajvinder denied any involvement in preparing or providing the RTA. When asked if she knows the alleged tenant, Parampreet Pannu, she said "I don't recall this". When asked again if she knows a Parampreet Pannu, she said she did not remember. When asked if she knows who Parampreet Pannu is, she said she did not remember. When then asked if she owned real property with Parampreet Pannu, she answered "Which property?" She was shown the state of title to property in which Parampreet Pannu, Joginder Hundal, and she, are registered owners. She agreed she was the person listed on that title. Joginder Hundal is her father-in-law, and Mr. Pannu was his partner. When it was put to her that she had not been telling the truth, she said "I said I didn't recall", and that after 2014 she and her husband invested in a lot of properties with partners, and mostly her husband took care of this, as she was busy with work and her children. She said that after being shown the title, she now recalls, because this was her father-in-law's partner, and she holds only a 1% interest in the property. When it was put to her again that she had not told the truth, she said "I don't know why you are saying that, because there are so many similar names. This is not only Parampreet Pannu. On tenancy agreement, it doesn't specify which Parampreet Pannu, and you can't say I'm lying."

### Mr. Masood's Evidence

- [78] Mr. Masood testified that he is a senior mobile mortgage specialist with TD Bank. He does not consider himself a mortgage broker because he is employed by the TD Bank and paid 100% by commission for selling TD Bank products. He works anywhere, including from home, and at the hours he sets.
- [79] He was referred this matter by Rajvinder who gave him the name of the applicants and a contact number. Rajvinder has sent Mr. Masood multiple client referrals. Mr. Masood knows Rajvinder's husband, having met him socially and for work related matters. After Rajvinder made the referral, he did not have any further contact with her regarding the Mortgage other than to advise that it had been approved. Mr. Masood said the events were 10 years ago, and he has a "blurry" memory of them. In my view, he sometimes gave evidence of

what he thinks likely happened, rather than what he actually recalled.

- [80] His clients were Gurvinder, Gurwinder, and Manjit. Mr. Masood testified that he did not inform anyone that the Mortgage would only be approved if Manjit was added as a covenantor. All three applicants applied for a mortgage. I note that there is also no indication in the TD Mortgage file that Gurwinder and Gurvinder alone applied and were not approved, or that the TD Bank required another covenantor.
- [81] Mr. Masood testified that his role was to gather documents from the clients and fax them to the TD Bank underwriting team. Mr. Masood most likely contacted his clients by phone, but he does not recall speaking to Gurvinder. He agreed that as part of mortgage approval process, the bank needs income verification. That is provided by the client. He obtained that information by meeting with the clients and filling out the credit applications in person. He recalls the clients' home because it is close to where he attended high school. He said there were "multiple times" he had to go to collect documents, which he later said was likely three times. In my view, it was clear that Mr. Masood did not actually remember how many times he attended the home. Manjit's credit application was signed on May 22, 2015, and he faxed the documents to the TD Bank on May 23, 2015. I find it unlikely he went to the home multiple times. Mr. Masood identified the credit applications for the three applicants, each completed in his handwriting. He said the Mortgage file is missing the second page of Gurvinder's and Gurwinder's application. Mr. Masood recognized the Gift Letter as the standard gift letter for the TD Bank. He said this was one of the documents he received when he visited the clients at their home, but later said he does not recall how he received it. Mr. Masood does not recall how he received the RTA. Mr. Masood was referred to the requests from the TD Bank loan department. When he received those, he would have contacted his clients, collected the documents, and faxed the information to the TD Bank. The income verification is done by the TD Bank loan department.
- [82] Mr. Masood testified that in deciding whether to make a loan, the TD Bank considers factors such income, income documents, job history, source of down payment, credit history, whether there is a gift from family, if ratios are in line, if the property will be rented or will lived in, and whether the client wants a variable or fixed interest rate. The internal policies for lending criteria frequently change, but for job history, the TD Bank was more lenient in 2015 compared to now. He agreed it is harder to get a mortgage today than in 2015.

### Meeting with Notary Mr. Rauf

- [83] Mr. Rauf was the notary who completed the purchase of the Property for the parties. Gurvinder and Rajvinder agree that Rajvinder was the person who hired Mr. Rauf to prepare the completion documents. All the documents in Mr. Rauf's file that are signed by the three parties, including correspondence, the buyer's statement of adjustments, and mortgage, indicate that the Property is being purchased by the three parties, that they are joint tenants, and that all three are covenantors on the Mortgage.

- [84] Gurvinder testified that he attended Mr. Rauf's office with Gurwinder and Manjit. Prior to the meeting, he spoke with Rajvinder on the phone, and she told him that all the documents were ready to sign and to go to Mr. Rauf's office. In direct examination, Gurvinder said he felt that Rajvinder was also at Mr. Rauf's office but acknowledged that she was not. Gurvinder was referred to his examination for discovery transcript on July 11, 2024, when he stated that Rajvinder was at Mr. Rauf's office and that she had provided a translation as Mr. Rauf read documents to them in English. Gurvinder said that at the time, he felt that Rajvinder was with him, however when he thought about it later, he thought she was not there.
- [85] Gurvinder testified that Mr. Rauf told them that their signatures were for the Property they were buying, and for how much, and that all three names would be on the Property "but there was no other communication regarding shareholder, nothing like that." They all signed wherever Mr. Rauf asked them to sign. No one gave him any legal advice about the significance of having three joint owners. He did not ask Mr. Rauf what the documents meant because he had already had a discussion with Rajvinder, and she explained them. Rajvinder had told him that their mother's name "will be showing there, but she will just be holding it" for them, and "Brother, you go ahead and sign." When Gurvinder was asked if he inquired of Mr. Rauf if there was any trust agreement, he said he did not because Rajvinder had already told him that the Property was his. He trusted his sister. He would only have asked for a trust agreement if he had had any doubt. He was the one making all the payments for the Property.
- [86] Gurwinder recalls going to the meeting with Mr. Rauf to sign documents. It was a short meeting. They were advised that "this was the Property, and all three of you can sign here." She did not have any questions about what they were signing. She said that Mr. Rauf kept pointing to where she needed to sign and she signed.
- [87] Manjit testified that she attended the meeting with Gurvinder, but Gurwinder was not there. Mr. Rauf told them that the ownership was joint. She understood that "joint in Punjabi" means that if one joint tenant passes away before the other two, then the share of the one who passed away, automatically goes to the remaining joint tenants.

Events concerning the Property after the Purchase

### **Finances concerning the Property**

- [88] Gurvinder and Gurwinder testified that initially they had intended to renovate the Property and move in. However, after the purchase completed, Gurvinder was busy with his work, and they did not have time to do the renovations. The tenants who had been in the Property moved out soon after they purchased the Property. They decided to rent the Property, and the manager of Omax Realty, where Rajvinder works, took care of doing that. A statement of rental income and expenses from Omax Realty for the period from August 15, 2015, to the end of December 2015, shows that rent varied but was about \$2,050 per month. Parampreet

Pannu was not a tenant. The net amounts were paid to Gurwinder and Gurvinder, but not to Manjit. The extended family moved into the Property in June 2016. The 8076 Property was sold in 2017 and the net proceeds after payment of the mortgage and line of credit were \$374,824. Gurvinder testified that he and Gurwinder have paid all Mortgage payments since the Property was purchased. They have never missed a payment. He agreed that, hypothetically, if he and Gurwinder missed a payment, the TD Bank could sue all three of them, which is why he has never missed a payment.

- [89] When Manjit was asked if she had any concerns about the plaintiffs' ability to pay the Mortgage, she said she was working and the Property was rented, so there was rental revenue and not many expenses. When it was put to her that she did not consider that there was any real risk to her by signing the Mortgage, she replied "No, I didn't think about it at that time at all. Who thinks of it at all. We were all together then." When asked if the Mortgage had prevented her from getting a loan, she answered, "How? Where would I get a loan from, and what for? We were in a basement. His dad's pension hadn't even started yet." She agreed that she has not made any Mortgage payments, and after the Incident has not paid any expenses of the Property.

### **Relationships Between Family after the Incident**

- [90] Gurvinder testified that after the Incident, various extended family members tried to resolve the Incident, but they were unsuccessful. He denied that he sent relatives to Manjit to try to convince her to transfer her 1/3 registered interest to him. He said he did not know at that time and did not know until the Mortgage came up for renewal four years later, that Manjit was claiming that she owned 1/3 of the Property.
- [91] Gurvinder denied that between the end of 2016 and 2020, he telephoned Manjit and threatened her if she did not transfer the 1/3 interest to him and Gurwinder. He testified that he has never called Manjit from the day she left the Property. However, he said that he has received phone calls from Rajvinder and Manjit which he has not answered. Gurvinder denied that he also threatened Manjit that he was going to start an action in India against her. However, he agreed that in 2024 he did that, but said it concerns a different property in India.
- [92] Manjit testified that Gurvinder called her once between the time she moved from the Property and when this lawsuit started in 2020. In the telephone call, Gurvinder threatened that he will shoot her and Rajvinder. Gurvinder testified that in 2018 or 2019 he was contacted by the RCMP. He was told that Rajvinder and Manjit alleged that he had a gun and threatened them. He has had a gun license for 15 years, but he has never bought a gun. He spoke with the police. There is no evidence anything became of that complaint.

- [93] Gurwinder testified that after the Incident in September 2016, she has not personally had any contact with Manjit. She has never heard Gurwinder threaten Manjit. Gurwinder has never called Manjit in Gurwinder's presence, but Gurwinder has shown her screen shots on his cell phone of calls he has received.

### Power of Attorney and Severing the Joint Tenancy

- [94] Rajvinder testified that in 2019, her mother asked her if she needed to get legal advice. Rajvinder understood this was because her mother was receiving phone calls from Gurwinder. She took Manjit to a lawyer, Mr. Mattoo, and she waited outside and "tried to not get involved." On June 28, 2019, Manjit signed Form A transfer, severing the joint tenancy. However, it was not filed until two months later. On August 31, 2019, Manjit signed a power of attorney appointing Rajvinder her attorney. On the same day, the Form A transfer severing the joint tenancy was filed in the Land Title office. The two dates were not explained in evidence.
- [95] Manjit denied any knowledge of severing the joint tenancy. Manjit testified that she does not remember signing the Form A transfer, and she did not know about it, what it was for, or what its effect was. She testified that she does not recall if someone advised her to sign this, or how it came to be this was signed. When she was asked if Rajvinder suggested that she go to Mr. Mattoo to sign this, she said she doesn't remember at all. She recognized her signature.

### Attempts to Renew the Mortgage

- [96] Gurwinder testified that the first time he became aware that Manjit was claiming that she was a 1/3 owner of the Property, was when the Mortgage was coming up for renewal in 2020. Gurwinder had shopped around for the best interest rate which he got at the Royal Bank. The bank representative told him that all owners of the Property would have to sign. Gurwinder informed the bank representative that he had no communication with Manjit. The bank representative asked for Manjit's number and said they would call her. Gurwinder understood this was not fruitful, and that Rajvinder's husband told the bank representative not to contact Manjit. As a result, Gurwinder consulted a lawyer, Mr. Sohi, who wrote to Manjit on February 15, 2020. Gurwinder testified that the purpose of the February 15, 2020, letter was to ask Manjit to transfer the 1/3 interest in the Property to him and Gurwinder, or to sign for the upcoming Mortgage renewal. The February 15, 2020, letter is not in evidence, but the response to it is. Gurwinder agreed that the Mortgage renewal was not up until June 2020. He said he may have been shopping for a mortgage before the renewal.
- [97] On February 28, 2020, Mr. Deol, a lawyer acting for Rajvinder who was then acting under Manjit's power of attorney, wrote to Mr. Sohi advising that Manjit "does not agree to transfer her 1/3rd ownership interest in the Property to any person." Gurwinder testified that, as a result, they could not get a mortgage with the Royal Bank. The Mortgage is still with the TD Bank which agreed to extend the Mortgage as an open mortgage without any further

signatures, but at a variable rate which is higher than what the plaintiffs would have paid with the Royal Bank.

- [98] Manjit testified that while she was in India around the time of the COVID pandemic, Gurvinder sent her papers. She showed them to her brother, who told her that the papers were to change title and not to renew the Mortgage. She said that if the papers had been for renewal of the Mortgage, she would have signed.
- [99] Rajvinder testified that when her mother was in India, she got a message that there were Mortgage documents to sign. She saw the February 15, 2020 letter, and it requested her mother to transfer her 1/3 interest in the Property. She retained Mr. Mattoo for her mother.

### Expert Evidence

- [100] Mr. Chaudhry is a mortgage broker and was qualified as an expert in that area. Mr. Chaudhry began his career in banking in 2007 with the Royal Bank. After three months, he moved to Scotiabank and stayed there for nearly 3 years preparing mortgage applications. He also acted as mortgage underwriter. In 2010, he became a licenced mortgage broker and, since 2014, has been the founder and managing partner of Kraft Mortgage Canada. He is licenced in British Columbia and Ontario and leads a team of 50 mortgage brokers.
- [101] Mr. Chaudhry is involved in the preparation and submission of mortgage applications to lenders every day and is familiar with the practices and requirements of lender underwriters in 2015. He submits mortgage applications to the TD Bank on a regular basis. He has access to banks' internal underwriting manuals and access to banks' designated representatives that are available to brokers to ask questions, or if a client needs an exception to a bank policy. Mr. Chaudhry testified that he is ultimately not the person who approves the mortgage; the lender makes the decision, as it is their money, but he is experienced and has knowledge of the likelihood of a mortgage being approved.
- [102] Mr. Chaudhry prepared two written opinions. The first was provided when the TD Bank Mortgage file had not yet been produced in this litigation. Mr. Chaudhry was provided only the amount of the plaintiffs' and Manjit's actual incomes, the Mortgage amount, deposit and down payment amounts, and monthly Mortgage payment amounts. He opined that based on the plaintiffs' 2015 income alone, the plaintiffs' ability to secure financing for the Property was "plausible", as the income figures provided align with typical income requirements for a mortgage of this size when considering the down payment and monthly Mortgage payment obligations. The Mortgage payments were about 33.5% of the plaintiffs' combined annual income, which is within the typical threshold of 28-36% used by lenders to determine mortgage affordability. I note that the 2015 figures had to be retrospective figures, as the Mortgage was applied for in mid-2015. Mr. Chaudhry further opined that Manjit's reported income, while not substantial, did provide an incremental benefit to the overall financial profile presented to the lender. I note that if the 2014 figures alone had been used, the calculation would have been 38.3% which is outside what Mr. Chaudhry

states is the typical threshold.

- [103] Subsequently, Mr. Chaudhry received the TD Bank Mortgage file. In the interim, the defendant had also served a report from another mortgage broker, Manuj Aggarwal. Mr. Aggarwal's report was not tendered in evidence by the defendant.
- [104] Mr. Chaudhry provided a second report based on the new information in the Mortgage file and responded to Mr. Aggarwal's report. Mr. Chaudhry noted that the Mortgage file provided "key information". Mr. Chaudhry now had the employment letters and the knowledge that the plaintiffs owned the 8076 Property, subject to a mortgage, which would be rented.
- [105] I note that the plaintiffs' combined income, as reflected in the Mortgage file, is higher than what Mr. Chaudhry had previously been told to assume for his first report. This is for two reasons. First, at the time, Gurwinder had two jobs and the TD Bank projected, based on the employers' letters, that Gurwinder would make more than she subsequently did as she later quit the pizza job. This is why Mr. Chaudhry's first report, based on retrospective actual income, assumed a lower income. Second, Mr. Chaudhry was now aware that the plaintiffs' owned the 8076 Property, subject to a mortgage, and that it would be rented. He had not previously been advised of this.
- [106] Mr. Chaudhry calculated the "TDS" (total debt service) ratio, and the "GDS" (gross debt service) ratio which is the income to expense ratio for only the property being purchased. Mr. Chaudhry opined that under standard lending guidelines in 2015, it is highly likely the plaintiffs would have qualified for mortgage financing without Manjit's income. In 2015, mortgage lending "offered significantly more flexibility" than today's market. At that time, most lenders including the TD Bank allowed 80% of rental income to be used for qualification purposes. Based on the RTA and 8076 Property expenses, using 80% of rental income, or even only 50% of rental income, the TDS ratios are 27.84% and 35.43%, well below the maximum allowable of 44%. Further the GDS ratio without Manjit's income was 30.86%, which is below the maximum allowable GDS ratio of 39%. Mr. Chaudhry also discussed alternatives if rental income was not considered. In 2015, the mortgage market included many active lenders who routinely approved similar applications with comparable debt service ratios.
- [107] Mr. Chaudhry agreed that it is not just income that is required for mortgage approval. There are other factors. He was only asked to opine on whether the plaintiffs' income was adequate. Although the plaintiffs' 2016 incomes are listed in his first report, he never considered them because they are not relevant to what he was asked; he simply listed this as information he was provided. He was asked to assume that there was \$43,611 in deposit and down payment. Like the TD Bank, he assumed the down payment came from a gift and agreed that the borrower would have to satisfy the lender that these funds were not borrowed. He said that is why the mortgage broker will collect bank statements. If the down payment had been taken from a line of credit, then the lender would have to include the

payment of that line of credit to see if it changed the ratios. He had not done those calculations because there was the Gift Letter in the Mortgage file.

- [108] Mr. Chaudhry acknowledged in his report and in testimony that different mortgage professionals may reach different conclusions based on their interpretation of lending guidelines and risk assessment practices. However, in his opinion, it is highly likely that the plaintiffs would have qualified for a mortgage without Manjit's income.

Issue 1: Was the registration of Manjit's name on title gratuitous?

- [109] The plaintiffs claim that Manjit holds the Property on a resulting trust in their favour. To succeed, they must establish that the registration in Manjit's name was gratuitous. If Manjit gave value, then no resulting trust can be established. If Manjit did not give value, then the plaintiffs' intentions are the governing considerations. If the plaintiffs intended a gift, which they say they did not, then the presumption of a resulting trust is rebutted. If it is unclear what the plaintiffs' intentions were, then the presumption of resulting trust applies, and the onus is on Manjit to rebut it. As noted previously, much of the parties' evidence and arguments were focused on the threshold issue of whether the registration of Manjit's name on title was gratuitous versus whether she gave value. Manjit submits that she gave value, and she was a purchaser of the Property along with the plaintiffs.
- [110] The plaintiffs allege that they have supported Manjit and Sodagar before and after the Purchase, and that Manjit did not contribute anything to the purchase of the Property, including the deposit, down payment, Mortgage payments, property and utility taxes, or insurance.
- [111] Manjit argues two bases for her position that the registration in her name was for value. The first is that the extended family shared finances. What was hers was the plaintiffs, and what was the plaintiffs was hers. She contributed to family finances, and therefore she directly and indirectly contributed to the purchase of the Property. The second is that Manjit is a covenantor on the Mortgage, thus putting herself at risk for payment. Manjit's counsel characterizes this as a situation of a "shared life, mutual contribution" and where Manjit had an "expectation of ownership" of the Property "rooted in familial interdependence."
- [112] For the reasons below, I find that the plaintiffs have established that Manjit did not provide value and that the registration of Manjit's name on title was gratuitous.
- [113] First, leading up to the purchase of the Property, and until the Incident, I find that there was not any sharing of accounts or finances where the parties "were all one" and where "what is hers is theirs, and what is theirs is hers", as alleged by Manjit, such that there was an indirect contribution by Manjit to the purchase and/or maintenance of the Property. In my view, that distorts the reality, which I find is that the plaintiffs were substantially financially supporting Manjit and Sodagar by paying for many of their purchases, and providing them with a home. The analysis of the banking statements and the income documents, as described above, support this. I appreciate that the extended family shared a home, and

Manjit has established that she twice transferred funds to the plaintiffs to pay living expenses. It is also possible she paid some other family living expenses within her modest income, although she has not proven that. However, her argument ignores that she and Sodagar were incurring their own living expenses. Anything she contributed to the household was far less than what she and Sodagar would have needed to live on their own, and for their own personal expenses. Manjit's income was less than \$15,000 per year, and she travelled. Sodagar was not working, there was no evidence that he had any income, and he has serious health issues. I do not accept Manjit's assertion that if she had not contributed the amounts she did to the household, that she would have saved money. Any money she was able to save was because the plaintiffs were supporting her and Sodagar. Further, I find that Manjit did not directly contribute money to the purchase price or maintenance of the Property. I find that the plaintiffs paid the deposit and down payment, and have paid all the Mortgage payments, property and utility taxes, and insurance for the Property since it was purchased 10 years ago.

[114] Second, the parties provided several authorities as to whether being a covenantor on a mortgage is providing value, rendering a transfer not gratuitous. As noted in *Bajwa* at para. 16, "whether value was given is a question of fact to be determined on the evidence in each case."

[115] In *Bajwa*, Mr. Pannu and Ms. Virk had been in a romantic relationship. Mr. Pannu, Ms. Virk and her mother purchased property and were registered on title. The plan was that Ms. Virk's brother would operate a towing business from the property and live there. The Virks could not obtain a mortgage without Mr. Pannu agreeing to be a covenantor on the mortgage. Mr. Pannu found the property through a realtor, negotiated its purchase, and secured the mortgage as a principal borrower. The Virks paid the \$35,000 down payment. Mr. Pannu had not been called upon to make the mortgage payments, and he did not otherwise contribute to the maintenance of the property. The Virks sought an order that Mr. Pannu held his registered interest on trust for them. Mr. Virk claimed there was an oral agreement he was one third owner for obtaining the mortgage and incurring the risk. The Court found that Mr. Pannu contributed significantly to the purchase by pledging his credit and taking on substantial debt. The Virks otherwise would not have been able to purchase the property. Mr. Pannu exposed himself to the risk of having to pay the mortgage when the equity in the property was only \$35,000. There was also evidence that Mr. Pannu was the "driving force" in finding the property, negotiating its purchase, and then facilitating its purchase through the mortgage: at para. 6. The trial judge and Court of Appeal concluded that Mr. Pannu's contribution was at least equal to that of the other two registered owners: at para. 13.

[116] In *Jafar-Gholizadeh v. Larijani*, 2018 BCSC 279, a daughter agreed to be a covenantor on a mortgage on property purchased in the name of herself and her mother. The mother paid the mortgage. The daughter claimed that she had provided value by pledging her credit. The mother could not have obtained the mortgage without the daughter doing so. Because

the daughter assisted her mother by going on title and being a covenantor, the daughter lost her first time home buyer's benefits. Justice Fitzpatrick concluded that the daughter did provide value for the purchase of the property by co-signing the mortgage and pledging her credit and exposing herself to risk. Without the daughter having done so, the mother could not have purchased the property. Therefore, the presumption of resulting trust could not apply: at para. 133.

[117] In *Freeland v. Farrell*, 2022 BCCA 99, the parties had a short romance and planned to purchase a home together. They both signed the mortgage and were registered as joint tenants. The petitioner paid the down payment and made all the mortgage and other payments related to the property. The relationship ended before either party moved into the property. The parties had referred to *Bajwa and Aujla v. Kaila*, 2010 BCSC 1739, aff'd 2013 BCCA 158 (a case also concerning an allegation of resulting trust and a mortgage). The Court noted that on the facts of those cases, the co-purchasers were unable to purchase the property without the pledge of credit from the other co-purchasers: at paras. 30, 48-56. Those co-purchasers were found to have given value. The Court rejected that there was a rule of law that "a co-purchaser of a property who is also a co-covenantor on a mortgage must be found to have given value for the purchase of the property", and that it is possible to be a covenantor on a mortgage debt gratuitously: at para. 59. On the facts in *Freeland*, the petitioner could have financed the purchase on his own, and the respondent's pledge of credit was not required to purchase the property. The petitioner had financial worth, and there was equity in the property. There was no evidence that the respondent was hindered because she was on the mortgage, and she declined an early opportunity to be removed from the mortgage. The determination of whether value was given is not a "theoretical exercise" and the trial court must determine if the co-covenantor "in fact gave value": at para. 61. The question is whether the co-covenantor "provided tangible, meaning real or material, value": at para. 63. The Court in *Freeland* found no error in the trial judge's conclusion that "given Mr. Freeland's assets and income, any risk of personal liability to Ms. Farrell was not, using the judge's own word, 'real'": at para. 64.

[118] In *Kennedy v. Smith*, 2022 BCSC 1622, Ms. Kennedy alleged that she and Mr. Smith had been in a long-term spousal relationship, and during that relationship they purchased a home on which she was registered on title, and a co-covenantor on the mortgage. Justice Francis found there was no spousal relationship and went on to determine Mr. Smith's position that Ms. Kennedy held her registered interest in the property on a resulting trust in his favour. Ms. Kennedy did not contribute any funds to the capital cost to purchase of the home or make any payments on the mortgage but did pay some ongoing utilities costs. The only consideration Ms. Kennedy could be argued to have provided was as joint covenantor on the mortgage: at para. 72. At the time of purchase, Ms. Kennedy was on a public disability pension of about \$14,000 per year, and Mr. Smith had income of about \$75,000 per year: at para. 74. Justice Francis distinguished the facts from those in an earlier case, *Petrick (Trustee) v. Petrick*, 2019 BCSC 1319, where the transferee did make financial contributions to the jointly held property, and distinguished the facts from those in *Jafar-Gholizadeh*,

where one joint tenant would not have been able to purchase the jointly held property without the pledging of credit by the other joint tenant. While it could be "notionally" argued that Ms. Kennedy had exposed herself to risk, it was "nominal". Ms. Kennedy's pledging of credit was not necessary for Mr. Smith to purchase the home, and it seemed unlikely her pledging of credit assisted Mr. Smith in the purchase. Further, any risk she was exposed to was minimal given her lack of any assets in the event of default: at para. 76.

- [119] With that review, I turn to the evidence. I have already noted that I have concerns about the credibility of parts of all the parties' and Rajvinder's evidence. The following are my findings and of what I conclude is the preponderance of probabilities in all the circumstances.
- [120] I find that prior to the referral to Mr. Masood, Rajvinder and Gurvinder talked about what was needed to obtain a mortgage. I find that they discussed that the plaintiffs' incomes may not be enough to have the Mortgage approved. I find that Rajvinder suggested that it would improve the chances of being approved for the Mortgage if Manjit's name was on title and as covenantor. This is what resulted in all three parties being applicants for the Mortgage when Mr. Masood was contacted. It follows that I reject Rajvinder's evidence that Gurvinder told her that he and his mother were purchasing the Property together. I come to these conclusions for the following reasons.
- [121] First, I reject Rajvinder's evidence that she had nothing to do with obtaining the Mortgage other than providing Mr. Masood's name and contact information. I reject her evidence because: (a) as discussed below, the evidence shows that Rajvinder was involved in the obtaining of and creation of documents to support the mortgage application; (b) Rajvinder likely had knowledge of what was required to obtain a mortgage, or at least more knowledge than Gurvinder. At the time, Rajvinder's husband was about to become a licensed mortgage broker. Rajvinder was a realtor and had many times referred clients to Mr. Masood to obtain financing. Further, she testified that from 2014 onwards, she and her husband and partners had invested in many properties; and (c) she was helping her brother, to whom she was close.
- [122] Second, the findings above are consistent with Mr. Masood's evidence, which as an independent witness I accept, that his clients were the three applicants who were applying for the mortgage, and that he never said to anyone that the mortgage would not be approved unless Manjit was on title and a covenantor. In other words, this was not an application by the plaintiffs which was then rejected as not being sufficient; it was from the beginning an application by all three. Mr. Masood's evidence is also corroborated by the TD Mortgage file which does not reveal any suggestion that the plaintiffs only had initially applied and had been rejected. I recognize that Mr. Masood's evidence is also consistent with Manjit's version of events that from the beginning the parties were purchasing the Property together, however, for the third reason below, I think the former is more likely.

- [123] Third, for the reasons I discuss later, I accept Gurvinder's evidence that it was never the plaintiffs' intention to gift an interest in the Property to Manjit. There would be no reason to put Manjit on title other than to facilitate the Mortgage application.
- [124] I find that Rajvinder was involved in the obtaining of and creation of documents to support the Mortgage application. I reject Rajvinder's evidence that she had nothing to do with the Mortgage application because: (a) as discussed above, Rajvinder had knowledge of what was likely required to obtain a mortgage, and she was helping her brother to whom she was close; (b) more importantly, Rajvinder was involved in signing the Gift Letter. I do not accept her evidence that she was afraid of Gurvinder. She struck me as a capable, independent person, who would have no difficulty holding her own position. I find that she signed the false Gift Letter to help the plaintiffs obtain financing; and (c) even more importantly, she was involved in obtaining and creating the RTA. Her evidence regarding Mr. Pannu was untruthful. It is not a mere coincidence that Mr. Pannu's name was on the RTA and she simply forgot. I find that the Mr. Pannu on the RTA is her father-in-law's partner and her co-owner of property.
- [125] I find that Gurvinder was also involved in gathering documents needed for the mortgage application. I reject Gurvinder's evidence that he had nothing to do with obtaining the mortgage other than handing tax documents to Rajvinder. I find his evidence regarding the documents was untruthful as well. His name is on the Gift Letter, and I find that he signed it to facilitate obtaining the Mortgage.
- [126] I also find that Gurwinder was involved in obtaining the Mortgage by providing what was requested of her by Rajvinder or Gurvinder. However, I find that she had much less involvement, and it was primarily Gurvinder and Rajvinder who were arranging the Mortgage. Nonetheless, Gurwinder either willingly or blindly signed a false Gift Letter and a false RTA to facilitate obtaining the Mortgage.
- [127] It is unclear how much Manjit knew about all the documents in the Mortgage file. She was aware of her employer's letter which states that she was employed since 2012. This is seasonal work, but that is not stated in the letter. Why the letter was dated April 2, 2015, three weeks before Gurvinder made an offer to purchase the Property was not explained. Her bank records show that she was receiving EI payments, and I therefore conclude that she was not working at the time. She also signed a credit application that was not accurate. She was not widowed with no dependents.
- [128] In summary, all the evidence points to the parties and Rajvinder trying to put forward all possible sources of income or assets to support the Mortgage application.

- [129] I find that there was a meeting at the 8076 Property on May 22, 2015, where Mr. Masood met the plaintiffs and Manjit. I accept Mr. Masood's evidence, as an independent witness, that it is his handwriting on the form, he obtained those forms personally, and the application would not have proceeded without those forms being signed. It follows that I reject the plaintiffs' evidence that they did not meet Mr. Masood. I find that it was also at this meeting that Mr. Masood was given the RTA and the Gift Letter, signed and dated the day prior.
- [130] I accept Mr. Chaudhry's opinion. It is based on certain assumptions of fact, most of which are true, but which include the two false documents. As a result, I review his assumptions below. I conclude from that review, and for the reasons that follow, that it is likely the plaintiffs would have obtained the Mortgage, or other mortgage funding, without Manjit pledging her credit, despite the false documents.
- [131] First, the values and the expenses Mr. Chaudhry and the TD Bank assumed in making various calculations are supported by documents in the file. I accept those as accurate.
- [132] Second, the tax documents are present in the file, and I find they are accurate. There is no indication that Gurwinder's employment letters were inaccurate at the time they were provided, although she ultimately did not continue in both those jobs to the end of the year, so her actual income subsequently turned out to be lower than projected by the TD Bank. However, the assessment must be made on what was accurate at the time of the Mortgage application. The bank statements show Gurwinder's earnings from the full-time work regularly being deposited, and I accept that she was working at that point in time. Further, while Manjit's employer's letter does not state that she was working seasonally, her past income in her tax documents reflects this and is accurate. As noted previously, Manjit was in fact receiving EI at the time of the Mortgage application.
- [133] Third, the \$20,000 deposit came from the CIBC line of credit. The CIBC manager wrote to TD Bank, stating that the \$18,000 transferred to the CIBC Joint Account, which formed part of that \$20,000, was transferred from Gurvinder's "HPP PLC Account", and attached the transaction summary for both accounts. I had wondered if the TD Bank was aware that this referred to the personal line of credit, but it appears that the TD Bank was aware. The \$42,000 line of credit (this is after the \$18,000 and \$15,000 were taken from it to pay the deposit and down payment) is shown in the Mortgage file. The rental property worksheet shows the separate mortgage and line of credit amounts and calculates the equity in the 8076 Property at over \$150,000.
- [134] Fourth, the Gift Letter is false, but this forms part of that \$42,000 line of credit of which the TD Bank was aware. Mr. Chaudhry stated that if the \$15,000 was in fact taken from the line of credit, then the TDS and GDS ratios would have to be recalculated. The TDS and GDS formulas are plain from Mr. Chaudhry's report, and interest on this debt, say at 5%, makes little difference to the ratios. They would still be well under what Mr. Chaudhry states are the accepted maximums.

- [135] Fifth, the RTA is a false, but the Property (as opposed to the 8076 Property which was the subject of the RTA) was in fact was rented soon after the purchase, for about \$2,050 per month.
- [136] As dishonourable as the situation of the false documents is, they were accepted by the TD Bank. I therefore proceed on that basis and accept Mr. Chaudhry's opinion, based on what the TD Bank also assumed to be true, that it is highly likely the plaintiffs would have been able to obtain the Mortgage without Manjit's pledge of credit. I also add that this makes practical sense. Manjit's income is comparable to that of Ms. Kennedy in *Kennedy v. Smith*, where without the benefit of expert evidence, Justice Francis concluded that it was unlikely Ms. Kennedy's pledging of credit assisted Mr. Smith in the purchase. Manjit's income was similarly modest and would barely cover basic living costs for her and Sodagar. Further, there is nothing in the Mortgage file that indicates that the plaintiffs applied alone and were rejected, or that Manjit's income was a deciding factor. However, even if the bank did not know that the deposit and down payment came from the line of credit, or knew that the plaintiffs planned to rent the 8076 Property but did not yet have a tenant, for the same reasons, I am not persuaded that this would have been fatal to the plaintiffs obtaining financing. I accept Mr. Chaudhry's opinion that in 2015, the mortgage market included many active lenders who routinely approved similar applications with comparable debt service ratios.
- [137] I conclude that despite the discussion between Gurvinder and Rajvinder that Manjit's name may have to be on title to facilitate obtaining financing, that the plaintiffs would have been able to obtain financing from the TD Bank, or elsewhere, without Manjit being a covenantor on the Mortgage.
- [138] I further find that despite Manjit being a covenantor on the Mortgage, she did not incur any real risk by doing so. I find this because: (a) Manjit's combined employment and EI income was less than \$15,000 per year, and this was for both her and Sodagar. Manjit was in fact on EI at the time of the Mortgage application and subsequently for much of 2015. Despite that her credit application stated she was widowed with no dependents, that is not true; (b) Manjit agreed she had no assets. She therefore had no assets at risk; (c) Manjit acknowledged that she was not concerned that the plaintiffs would default on the mortgage; (d) there was no evidence that the plaintiffs had ever been in default on their CIBC mortgage, nor was there any suggestion that they had a bad credit rating, or any other factor that would elevate the risk to Manjit; (e) to the contrary, the evidence shows that the plaintiffs paid their credit cards in full every month and had more than \$150,000 in equity in the 8076 Property, even after the line of credit was increased by the \$18,000 and \$15,000; (f) Gurvinder was steadily employed. Gurwinder occasionally worked and was working full time at the time the Mortgage was obtained; and (g) the plaintiffs had supported Manjit and Sodagar for 10 years and were likely to continue to do so. I find that the risk to Manjit of ever being called upon to pay the Mortgage, or of being pursued by the TD Bank if there were any default, is vanishingly small. Further, Manjit has not suffered any detriment. She

testified that her name being on the Mortgage has never prevented her from obtaining other financing.

- [139] In summary, considering all the above, I do not consider Manjit's covenant on the Mortgage to be the type of tangible, real, or material value referred to in *Freeland*. Manjit did not give any value in exchange for her interest as a joint tenant, and I find that the registration of her name on title was gratuitous. As a result, I go on to consider whether her interest was held on a resulting trust for the plaintiffs.

Issue 2: What was the plaintiffs' intention when registering Manjit's name to title; or if that cannot be determined, has Manjit rebutted the presumption of resulting trust?

- [140] For the reasons that follow, I find that it was never the intention of the plaintiffs to gift an interest in the Property to Manjit. Rather, the only purpose of having Manjit on title was in furtherance of Gurvinder's belief, based on discussions between him and Rajvinder, that it would facilitate the Mortgage approval.
- [141] As discussed in *Pecore*, all the relevant circumstances which may bear upon the parties' intentions at the time of the purchase must be considered, but evidence of past intention must be viewed with caution.
- [142] Turning first to the nature of the family relationships at the time the Property was purchased, I find that it is unlikely the plaintiffs would have been inclined to make a substantial gift to Manjit. The family loved each other, but I find that there had been a brewing discontent between the plaintiffs, and Manjit and Sodagar. Gurvinder felt an obligation to support his parents and have them live with him. I do not accept Manjit's evidence that she was providing any significant childcare. She never testified that she was doing household chores. I find that Gurwinder was shouldering all the household and childcare responsibilities and felt oppressed by Manjit. Sodagar abused alcohol and was disruptive. There were frequent arguments. Although the Incident post-dates the purchase, it confirms the nature of the family relationships. The Incident involved physical violence and was the final straw. The evidence of Navpreet, which I accept, that Rajvinder encouraged her to tell her parents they were wrong, speaks to the nature of the relationships.
- [143] Considering the financial relationship between family members, I also find it is unlikely that the plaintiffs, who have four children to support, would have been inclined to gift a 1/3 interest in the Property to Manjit. Such a gift would have more than eliminated any equity they had built up in the 8076 Property. Further, given that Manjit and Sodagar had been living with and supported by the plaintiffs for the past 10 years and were at that time likely to continue to be supported by the plaintiffs, there would be no purpose in gifting an interest in the Property to Manjit for her security.

- [144] I do not accept Manjit's evidence that Gurvinder ever indicated to her that they were buying the Property "together" and that she would be a "joint owner" or entitled to any share of it. I make this finding because: (a) Manjit gave contrary evidence at her examination for discovery that when the Property was purchased, there was no discussion about any entitlement on her part to an interest in the Property; (b) as Manjit was cross-examined, her evidence changed from: "we will buy"; to "we will buy together" and "that means joint property" and that is "what I felt"; to later that Gurvinder "said it will be joint property"; (c) while I accept that it is possible that Gurvinder may have said "we are buying the Property", this colloquial phrasing does not naturally mean that he and Manjit were buying the Property. Given the family finances, I find it more likely that "we" was referring to him and Gurvinder and that he was telling Manjit what he was planning and how he thought this would financially benefit the family; and (d) Manjit's evidence that, as part of their conversation regarding the purchase, she asked Gurvinder how they would afford to buy the Property since only she and Gurvinder were working, does not contain a true statement. At the time, the only people who were working were Gurvinder and Gurwinder. Manjit's was receiving EI at the time.
- [145] In addition to the above: (a) there is no evidence that Manjit took an active role in viewing the Property, or indicated that she should be on the contract for purchase, or was in any way a "driving force" in obtaining the Property; (b) Manjit did not make payments toward the purchase of the Property, and has not made any payments since. The plaintiffs have solely paid the deposit, down payment, mortgage, property and utilities taxes, and insurance in the 10 years since the Property was purchased; (c) there is no evidence that Manjit claimed any of the rental revenue that was earned on the Property in the last half of 2015; (d) it was not until three years after the Incident, that Manjit signed a power of attorney and severed the joint tenancy. However, strangely, Manjit denied any recollection whatsoever of that document, or any knowledge of its effect. It was filed in the Land Title Office in August 2019, the same day she gave Rajvinder her power of attorney; and (e) despite her evidence that she would cooperate in signing a mortgage, Manjit has refused to do so.
- [146] I have also considered evidence that could support Manjit's position that the plaintiffs intended to gift her an interest in the Property. The parties signed documents at Mr. Rauf's office that state they are joint owners. However, I accept Gurvinder's evidence that he trusted Rajvinder and Manjit as they are family, and that the reason Manjit's name was on title was because prior to the referral to Mr. Masood, he and Rajvinder discussed that putting Manjit's name on title would maximize the chances of the Mortgage being approved. There was no evidence to suggest, and I find, that there were no discussions between the parties and Mr. Masood or Mr. Rauf as to whether the title would accurately reflect the true beneficial ownership of the Property.

- [147] Finally, I accept Gurwinder's evidence, which I find is the most reliable of the parties and Rajvinder, of how she was informed of how the Property was going to be purchased, and it is consistent with the above. She testified that Rajvinder and Manjit told her that Manjit was "going on title", and that it was still their property and that Manjit would be holding it. Gurwinder did not testify that she was told that Manjit was going to be a joint owner with them. I find that Gurwinder had little involvement in the discussions between Gurwinder and Manjit, and Gurwinder and Rajvinder, and that she went along with what Gurwinder decided to do.
- [148] In summary, I find that it was never the plaintiffs' intention to gift a beneficial interest in the Property to Manjit when title was registered in their joint names. Rather, it was their intention that Manjit would hold her registered interest in the Property in trust for the purpose of obtaining the Mortgage. Manjit going on title was at the suggestion of Rajvinder to improve the Mortgage application. However, I find that in fact the Mortgage would have been approved, or the plaintiffs would have been able to obtain other financing, without Manjit's name on title and as covenantor. I find that this dispute arose because the Incident occurred and it has festered over time.
- [149] Further, even if it were unclear what the plaintiffs' intentions were, the presumption of a resulting trust would apply, and for all the reasons above, I find that Manjit has not rebutted that presumption.
- [150] In summary, Manjit holds her interest in the Property on a resulting trust in favour of the plaintiffs. It follows that Manjit's counterclaims are dismissed.

Issue 3: Have the plaintiffs established an unjust enrichment of Manjit?

- [151] In the alternative to their claim for a resulting trust, the plaintiffs claim that they are entitled to the relief sought on the basis of unjust enrichment. For the reasons below, I find that the plaintiffs have established an unjust enrichment of Manjit.
- [152] To establish a claim for unjust enrichment, the plaintiffs must prove: (a) an enrichment of Manjit; (b) a corresponding deprivation of them; and (c) the absence of a juristic reason for the enrichment: Kerr, 2011 SCC 10 at paras. 3, 36-40; Moore v. Sweet, 2018 SCC 52, para. 37.
- [153] The first two elements are assessed on a "straightforward economic approach". There must be a tangible benefit which has enriched the defendant, and a corresponding deprivation to the plaintiff: Kerr at para. 37-39. The third step, that the enrichment and corresponding detriment occurred without a juristic reason, involves a two-step analysis. The first requires a determination of whether there is an established juristic reason, such as a contract, a disposition of law, or a donative intent: Kerr at para. 41. If there is no established category of juristic reason, then *prima facie* this is proven. However, this is rebuttable at the second step, where the onus is on the defendant to identify another reason why the enrichment should be retained. This considers the parties' reasonable expectations and public policy arguments about whether the enrichments are unjust: Kerr at paras. 43-44.

- [154] Remedies for unjust enrichment are restitutionary: Kerr at para. 46. The first remedy to consider is monetary, but where that is not sufficient or appropriate, a remedial constructive trust may be imposed: Kerr at paras. 47 and 50. A remedial constructive trust is "imposed without reference to intention to create a trust" and is an equitable tool. Where a plaintiff can "demonstrate a link or causal connection between his or her contributions and the acquisition, preservation, maintenance or improvement of the disputed property, a share of the property proportionate to the unjust enrichment can be impressed with a constructive trust in his or her favour": Kerr at para. 50.
- [155] In this case, the plaintiffs have enriched Manjit because she is on title for a 1/3 share of the Property, now as a tenant in common. Manjit has failed to show that she has made any direct or indirect contributions towards the purchase or maintenance of the Property.
- [156] There is a corresponding deprivation, because the plaintiffs have taken on all the burdens in relation to the Property. They have paid all the costs of the Property.
- [157] I find that there is no juristic reason for Manjit's enrichment. The plaintiffs have shown that there is no established category of juristic reason. There was no contract between the plaintiffs and Manjit regarding the Property. The Property was not transferred by way of a disposition of law. Further, as discussed above, I have found that there was no donative intent. No other established juristic reason was argued. I am not persuaded that there is any other reason why the enrichment should be retained. While I appreciate that the family was sharing a home, in my view, this does not equate to a reasonable expectation on the part of Manjit or the plaintiffs, or a moral obligation on the part of the plaintiffs, that Manjit should become a 1/3 owner of the Property. No policy grounds were advanced. As discussed above, while Manjit may have contributed some income to the household for her and Sodagar's living expenses, the balance was very much in the favour of the plaintiffs who were substantially supporting Manjit and Sodagar. I conclude that it would be unjust to allow Manjit to retain the enrichment.
- [158] As for remedy, a monetary award would not be appropriate. This is the home of the plaintiffs and their four children and has been for the past more than ten years. The plaintiffs have demonstrated a direct link between their contributions and the acquisition, preservation, and maintenance of the Property. If a finding a resulting trust had not already been made, I would have found it appropriate to order the remedy of a constructive trust.

## Amendment

- [159] Finally, during final submissions, the plaintiffs applied to amend their notice of civil claim at para. 3 to conform with their evidence that they did not directly consult a mortgage broker, but consulted Rajvinder, who told them that the mortgage broker had advised that their income was insufficient to qualify for a mortgage. I allowed the amendment at the time and said that I would provide brief reasons in these reasons.

[160] The factors the court must consider regarding an application for a late amendment are reviewed in *Sperring v. Shutiak*, 2023 BCCA 54 at paras. 95-98:

- (a) is it inconsistent with the pleadings already filed on behalf of the party seeking the amendment;
- (b) is it inconsistent with evidence already tendered by that party and his witnesses at trial and on discovery;
- (c) if it had been asked for at the outset of the trial, would it have changed the whole course of the trial;
- (d) would it be unfair to the opposite party;
- (e) is it necessary for the purpose of determining the real issues raised or depending upon the pleadings?

[161] In my view, the amendment did not change the allegation which is that the plaintiffs understood that they needed Manjit's income to obtain a mortgage, and that is why she was on title. The only change in the amendment was that they received this information through Rajvinder, and not directly from the mortgage broker. This change is consistent with the evidence at trial. It was not shown that it was different from discovery evidence. If the amendment had been asked for at the outset of the trial, it would not have changed the course of the trial. In my view, there was no prejudice to Manjit. Manjit had served an expert report on the issue of whether the plaintiffs could have qualified for a mortgage without her. The amendment more accurately pleaded one aspect of the factual allegations but did not change the nature of the claims.

## Orders

[162] This Court declares that Manjit holds her interest in the Property on a resulting trust, or alternately a constructive trust, for the plaintiffs. Manjit has no beneficial interest in the Property.

[163] Given the real estate market; that it has been 10 years since the Property was purchased; that in the interim the plaintiffs sold the 8076 Property with significant net proceeds; and Gurvinder's interactions with the RBC about a new mortgage, I find it is unlikely that the TD Bank will object to releasing Manjit from the covenants of the Mortgage.

[164] I order that on receipt of evidence that the TD Bank has consented to Manjit being removed from the Mortgage, Manjit shall forthwith transfer her interest in the Property to the plaintiffs. In the event that the plaintiffs cannot remove Manjit as covenantor on the Mortgage, the parties have leave to reattend before me for further directions.

[165] The parties indicated they wished to speak to costs following these reasons. They may make arrangements through Court Scheduling to do so.

"Norell J."

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