

CANADA / JUDGMENT

## Rizzuto v. Grover

2020 BCSC 1564

### COURT

Supreme Court of British Columbia

### DECIDED

23 October 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 1564 Rizzuto v. Grover

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Rizzuto v. Grover,

2020 BCSC 1564

Date: 20201023

Docket: E54267

Registry: New Westminster

Between:

Garth Alexander Rizzuto

Claimant

And

Susan Marie Grover

Respondent

Before: The Honourable Mr. Justice Harvey

Reasons for Judgment

The Claimant, appearing in person:

G. Rizzuto

Counsel for the Respondent:

R. Henderson

Place and Date of Hearing:

New Westminster, B.C.

March 6, 2020

Place and Date of Judgment:

New Westminster, B.C.

October 23, 2020

- [1] This matter is brought as a summary trial pursuant to Rule 11-3(2) of the Supreme Court Family Rules, B.C. Reg. 169/2009 ["SCFR"].
- [2] The respondent, Ms. Grover, seeks the dismissal of the major portions, but not the entirety, of the within action. Specifically, she seeks: a declaration that the parties are not spouses pursuant to the Family Law Act, S.B.C. 2011, c. 25 ["FLA"] followed by a dismissal of the claimant's claims for relief under the FLA; a declaratory order that the respondent does not hold property in trust for the claimant; and the removal of certificates of pending litigation ("CPLs") placed on three properties located at or near Fernie, British Columbia; specifically: 18 Cedar Bowl Crescent, Fernie, B.C.; 20 Cedar Bowl Crescent, Fernie, B.C.; and 8 Black Rock Place, Fernie, B.C.
- [3] The action also seeks return of the claimant's personal effects as well as property belonging to his business, Rizzuto Construction Ltd. ("RCL"). RCL acted as a project manager on the construction of a residence at 8 Black Rock Place.
- [4] Two of the disputed properties, 18 Cedar Bowl Crescent and 8 Black Rock Place, are owned by 1110219 B.C. Ltd., a company solely owned by the respondent. The company is not a party to this action.
- [5] The claimant, Mr. Rizzuto, opposes the relief sought. He has acted in person throughout the proceeding save for the preparation of the initial pleadings. Subsequent to the commencement of the within proceeding, the plaintiff initiated three separate proceedings in Provincial Court naming the defendant, Ms. Grover, in two actions, and 1110219 B.C. Ltd. in one of them.
- [6] Mr. Rizzuto argues, implicitly, that the proceeding is incapable of resolution by way of summary trial because of conflicts in the evidence that go to the heart of the issues raised by his claims: were the parties spouses as the term is defined in the FLA; and has the respondent been unjustly enriched to the detriment of the claimant by virtue of his contribution to the acquisition and/or enhancement of the three identified properties.

- [7] In his second affidavit in opposition to the respondent's application, the claimant raises, for the first time, an express agreement between them that he says entitles him to an equity interest in both of the Cedar Bowl properties based upon the difference in the price paid by the respondent and the assessed values of each at the time of acquisition; a difference of approximately \$300,000. The respondent denied any such agreement.

## Background

- [8] The claimant owned and operated RCL when the parties first connected online in September of 2015. RCL operated in the area of Fernie, B.C. The respondent was and is still retired. When she met the claimant, she resided at her home in Burnaby, B.C.
- [9] By any standard, the parties, both of whom are 60+ years of age, began living in a marriage-like relationship. However, the question is: when did the spousal relationship commence? They, for a time, resided together, took meals together, and attended events together including travelling together in a motor home on various trips. In 2017, the respondent had a will prepared that referred to the claimant as her spouse. In it, she left significant portions of her estate to him were she to pre-decease him.
- [10] Both agree that the relationship ended on November 17, 2017, when the respondent moved out of the premises at 20 Cedar Bowl Crescent, Fernie, B.C. The claimant argues cohabitation had commenced on November 6, 2015. The respondent says it began in March or April of 2016. The commencement date is key given the provisions of the FLA.
- [11] The respondent acknowledged she visited Fernie frequently after first meeting the claimant in person on October 31, 2015 in Fernie. However, she says that they maintained separate residences until she moved to Fernie in or about March of 2016 after the sale of her Burnaby home, which she listed for sale in January of 2016.
- [12] She acknowledged that, by late 2015, she was doing bookkeeping for RCL, but says she was not paid for her work. She also became a co-signatory on RCL's business account in mid-December 2015 once she began doing books for it.
- [13] Once her home was sold, the respondent acknowledges living full time with the claimant at 20 Cedar Bowl Crescent, a home owned by the claimant's former spouse, Janice Edwards, but occupied by the claimant back when they first met. The parties' cohabitation was briefly interrupted by an alleged assault upon the respondent by the claimant resulting in police involvement and release conditions prohibiting the claimant from contacting her. However, the separation was relatively brief and the respondent does not argue that it interrupted the continuous period of cohabitation.
- [14] In November of 2015, the claimant was only occupying the basement of 20 Cedar Bowl Crescent. The upper floor was occupied by a Mr. Johnson and his family. The Johnsons were living there awaiting an occupancy permit on a premises that RCL was building for them.

- [15] In or about the middle of December of 2015, according to the claimant, the respondent asked him to have the Johnsons vacate the top floor of 20 Cedar Bowl Crescent so the parties could move to the main floor. The Johnsons vacated mid-January 2016 and the claimant and respondent moved upstairs. Mr. Johnson (in an unsworn email), noted the respondent moved in with the respondent "full time" at "some time in Late October or early November" of 2015.
- [16] The respondent acknowledges travelling between Vancouver and Fernie in late 2015 and early 2016, but says throughout she maintained her separate residence in Burnaby and did not form the intention to live with the respondent in Fernie until she made the decision to sell her Burnaby residence. She listed her residence in January of 2016, and the sale completed in March of 2016.
- [17] The respondent submitted evidence in the form of her credit card statement indicating her travels between the Lower Mainland and Fernie from November 2015 until March 2016.
- [18] The respondent's friend, Margaret Ford, deposed that the respondent was frequently in Burnaby during the last two months of 2015 and the first two months of 2016. Ms. Ford carried on to say that the respondent returned from her visits to Fernie during the four-month period and only moved permanently to Fernie after the sale of her home in March of 2016.
- [19] The claimant points out that following the allegation of assault in March of 2016, the investigating officer interviewed the respondent and his/her notes record the following:
- Grover explained that Rizzuto and her had known each other for several years and had been engaged in a domestic relationship for seven months and that Grover was helping Rizzuto in the office with his construction company.
- [20] The claimant also points to an email written by the respondent to him on November 2, 2015 which reads:

### Next Weekend

If it works for you, I could come back to visit you next Friday, Nov 6. My sister and Kett will be at my place until Tuesday Nov 10. I will clear my schedule so I could stay with you until November 13th and then it would b great if you could come back here with me for the weekend or longer if you like. Mi casa es tu casa (sic). Let me know what you think. I love you

- [21] Airline ticket receipts indicate the respondent travelled to Fernie on October 31, 2015 and returned November 2, 2015 to Vancouver.
- [22] It is acknowledged the parties travelled together to Vancouver Island in December of 2015 and the claimant was introduced to the respondent's mother.

- [23] As to the claimant's position that the parties began living together prior to November 17, 2015, he points to sworn material from his former bookkeeper, Paula Ehmann, and his daughter, Danielle Rizzuto. The former notes Ms. Ehmann trained the respondent to do RCL's books in late November of 2015 and that she met the respondent for the first time at the claimant's Cedar Bowl residence while she was "living there" in early November. The affidavit of Ms. Rizzuto states she met the respondent on November 6, 2015 at her father's home and that "after Ms. Grover moved into 20 Cedar Bowl Crescent, she listed her home in Burnaby for sale in January 2016 and when it sold she helped me out by giving me some of her furniture. She did not need it as my father's home was fully furnished."
- [24] No admissible evidence was ever filed from Mr. Johnson despite an adjournment being granted to allow the claimant to challenge the application with admissible evidence.
- [25] The claimant, for his part, stated he met the respondent online in September 2015; met her in person in late October 2015; and "she decided to move in with me in early November, 2015".
- [26] There is no disagreement that the parties resided together in a marriage-like relationship from the early part of 2016 until November 2017. During that time, the respondent stated she paid all the parties' common living expenses including the utilities, the day-to-day living costs, and food, etc. Further, she asserts that it was her, not the claimant, who provided a benefit to the other by working as RCL's bookkeeper without pay.
- [27] The claimant says he maintained various of the utility accounts in his name at 20 Cedar Bowl Crescent as well as purchased furniture and items for the home.

## The Properties

- [28] The three properties in dispute were acquired by the respondent solely in her name with her separate funds received from the sale of her Burnaby residence. The claimant argues he indirectly conferred a benefit on the respondent through negotiating purchase prices for both Cedar Bowl properties that were below the assessed values.
- [29] Although not referenced in the Notice of Family Claim nor in his first affidavit, the claimant in his second affidavit stated:

It was agreed that the claimant's financial portion of the ownership of the properties was the difference between the Assessed Value on both properties at that time and the purchase price paid by the Respondent. The Assessed Value of 18 Cedar Bowl was \$202,000 and the Respondent paid \$125,000, and the Assessed Value on 20 Cedar Bowl was \$783,000 and the Respondent paid \$575,000.

- [30] The property assessment in evidence indicated the higher value as described by the claimant. Assessed values, typically, are not relied upon by courts as indicative of fair market value. No appraisal was provided by the claimant substantiating his assertion that the properties were purchased below market value.
- [31] In the Notice of Family Claim, the claimant bases his entitlement to an interest in the disputed properties on the following allegations:
- b. the Claimant contributed directly and indirectly towards the maintenance and improvement of the subject properties by:  
  
Contribution of funds towards the acquisition, improvement and maintenance of the property;  
  
Labour contributed towards the maintenance and improvement of the properties and has been correspondingly deprived thereby.
- [32] The pleadings contain no assertion of the oral agreement referenced by the claimant in his sworn evidence.
- [33] The respondent denies any agreement respecting her ownership of the subject properties and deposed to the fact that she received no benefit from the claimant's oversight of construction at 8 Black Rock Place given: (1) the cost of construction far exceeded the costs initially suggested by the claimant; (2) she had to complete the project herself after the parties separated in November 2017; and (3) despite providing funds to RCL to pay sub-trade contractors for work done, she had to pay some of the contractors a second time after the claimant, or RCL, failed to make payments on the invoices.
- [34] Finally, she says the work overseen by the claimant through his company was deficient and costs were incurred by her to remedy the deficiencies.
- [35] The two Cedar Bowl properties, #18 and #20, were purchased by the respondent in July 2016 from the claimant's former spouse, Janice Edwards (#18), and from Ms. Edwards and the claimant (#20). The former was bare land.
- [36] Ms. Edwards, the sole owner of #20 and co-owner of #18, together with the claimant, offered no evidence as to the value of the properties or whether they were sold to the respondent for other than market value.
- [37] The third property, a vacant lot at 8 Black Rock Place, was purchased by the respondent in December of 2016 with the intention of building a home and selling it at a profit. She contributed the entirety of the purchase price. The claimant does not suggest any oral agreement respecting its ownership similar to that respecting the two Cedar Bowl properties.

- [38] In March of 2017, the respondent transferred her interest in both 8 Black Rock Place and 18 Cedar Bowl Crescent into the name of her numbered company; 1110219 B.C. Ltd. She owns all of the issued shares. The claimant says they are family property, but 1110219 B.C. Ltd. is not a named defendant. The respondent remains the sole registered owner of 20 Cedar Bowl Crescent.
- [39] RCL oversaw the construction of the residence at 8 Black Rock Place. The sub-contractors were engaged by and their work was overseen by RCL. The project was near completion at the time of separation.
- [40] The claimant says the arrangement as between him and the respondent respecting 8 Black Rock Place is that RCL would receive a management fee of 10% of construction costs payable upon the sale of 8 Black Rock Place. Invoices were prepared by RCL periodically, but it is not clear whether they were presented to the respondent for payment. It is also unclear whether the invoices were prepared by the respondent or the claimant. The invoices in evidence are addressed, not to the respondent, but to 1110219 B.C. Ltd.
- [41] In 2018, long after separation, RCL invoiced 1110219 B.C. Ltd. an amount of \$28,903 plus GST for services performed by RCL on behalf of 1110219 B.C. Ltd. regarding construction at 8 Black Rock Place. That account remains unpaid.
- [42] The claimant does not point to any financial contribution to the Cedar Bowl Crescent properties other than that he organized plans and permits for #18 and completed work on #20. He acknowledges that the respondent put up the whole of the acquisition costs. 18 Cedar Bowl Crescent remains, or remained at separation, bare land.
- [43] The other asset of significance referenced in the pleadings is a motor home seemingly purchased in the joint names of the parties in May of 2017. The cost was \$82,000. Payment was made by way of a trade-in (\$26,000) with the balance being paid in cash.
- [44] The claimant seeks his interest in the motor home which he says remains in the possession of the respondent. He also seeks return of unspecified personal items that remained in 20 Cedar Bowl Crescent when he was obliged to vacate because of an alleged altercation between him and the respondent.
- [45] Additionally, the claim says that the respondent has failed to return property of RCL to him despite requests.

### The Provincial Court Proceedings

- [46] Following separation, and after the commencement of this action, the claimant commenced three separate actions in the Provincial Court of British Columbia. One was commenced in his name personally for the return of various items referenced as his personal and excluded property in this proceeding (or payment in lieu of return).

- [47] The other two actions were commenced in the name of RCL. One claims RCL carried out home improvements without payment on the property located at 20 Cedar Bowl Crescent, which is the same basis upon which the claimant asserts his claim in constructive trust.
- [48] The third action alleges unpaid management fees and/or fees for labour in respect of the construction of the premises at 8 Black Rock Place. Again, this is the same foundation upon which the claim in trust is advanced in this proceeding.
- [49] In total, the two monetary claims amount to approximately \$65,000.
- [50] In neither of the actions commenced by RCL is there reference to any claim in trust. Rather both claims are characterized as claims founded in quantum meruit and/or debt.
- [51] 8 Black Rock Place is owned by 1110219 B.C. Ltd., a company solely owned by the respondent. The action commenced by RCL in Provincial Court names 1110219 B.C. Ltd as the defendant.
- [52] The two Provincial Court actions commenced by RCL assert "Ms. Grover reneged on her oral agreement to pay Rizzuto Construction Ltd. for their services. Rizzuto Construction Ltd. is lodging a claim for the unpaid labour they provided Ms. Grover." That pleading is inconsistent with the pleadings in this proceeding.
- [53] All claims in Provincial Court remain extant. The respondent, Ms. Grover, has filed replies in all three denying any liability.
- [54] At a Judicial Case Conference held in this proceeding, the claimant was ordered to produce all documents substantiating his claim. The JCC was held on July 27, 2018 and since that date no list of documents has been provided nor have any steps been taken in the litigation save for this application by the respondent.

### Position of the Parties

- [55] The respondent says while their relationship began in November of 2015, they did not commence cohabitation until March of 2016 when she moved from her residence in Burnaby and took up permanent residence in Fernie at 20 Cedar Bowl Crescent. There was a period of separation in late March or April of 2016 following an alleged physical altercation between the parties. However, thereafter, the parties lived together continuously, albeit perhaps unhappily, until November 17, 2017.
- [56] She argues the evidence makes clear that she received no benefit giving rise to a constructive trust in favour of the respondent with respect to any of the three disputed properties. She further denies any agreement between her and the claimant that the claimant was entitled to an equity position in the two Cedar Bowl properties based upon the difference between the assessed values of the two properties and their purchase price.

- [57] The claimant agrees the parties separated on November 17, 2017, but says they commenced living together on November 6, 2015 and, as such, he is a spouse within the meaning of the FLA.
- [58] He alleges a trust founded on unjust enrichment through the contribution of his work and contribution to the improvement of the properties. However, in his material in opposition to the respondent's application for dismissal by way of summary trial, he states there was an express agreement as to the ownership of the two Cedar Bowl properties based on the difference between the assessed value of each and the purchase price paid by the respondent.

### Summary Trials

- [59] The test for the suitability of a proceeding by way of summary trial (Rule 11-3 of the SCFR), which was set out in *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 (C.A.), also applies for family matters. See *G. (M.R.) v. L. (A.)*, 2013 BCSC 173 at para. 32; *Ghavami v. Jamali*, 2014 BCCA 21 at paras. 32-33.
- [60] The general approach was summarized in *Leisure Aquatics Inc. v. Lax Kw'alaams Band*, 2012 BCSC 1202 at para. 24:
- [24] The parameters with respect to the summary trial procedure are well-established. This is a legitimate mode of trial in appropriate circumstances. Where the court is able to make the necessary findings of fact on the material filed, even if there are conflicts in the evidence, that should be done. However, where the necessary findings cannot be made because of quite fundamental conflicts that cannot be fairly resolved, the court may conclude that the matter is not suitable for disposition under this rule.
- [61] In *Cantelon v. Wall*, 2015 BCSC 810, the Court dealt with a summary trial application in the face of directly contradictory assertions from the two parties about whether they were living in a marriage-like relationship. At para. 24, the Court noted that although there was supporting documentary evidence (emails), that evidence could potentially support either party. The Court ultimately found that a full trial was necessary.
- [62] A similar conclusion was reached (in a non-family matter) in *Fraser v. Abma*, 2012 BCSC 1429. There is a helpful discussion at paras. 47-52.
- [47] In my view, the present case is not suitable for determination by means of the summary trial procedure. In this case, issues of credibility arise on every essential element of the nature of the oral agreement between the parties that cannot be resolved without preferring the evidence of one party over the other. The totality of the evidence, including the limited and partial documentary evidence in the form of e-mails and other documents, does not assist in determining what an objective and reasonable bystander would conclude as to the nature of the oral agreement the parties entered into for the rental of the Property. The evidence conflicts on every essential point of the oral agreement including the duration of the

tenancy, what parts of the Property were to be included or excluded from the rental, what improvements were permissible, and the uses the plaintiffs could make of the Property including whether sub-tenants were permitted.

- [48] The evidence filed on these applications includes two comprehensive affidavits filed by Ms. Fraser, the main plaintiff in this case, as well as two other shorter affidavits, and two comprehensive affidavits filed by Mr. Abma, one of the defendants in this case. Included as exhibits to the various affidavits are some of the e-mails between the parties as well as numerous photographs of the Property in issue before and after Ms. Fraser moved onto the Property.
- [49] In *Charest*, at paras. 54-67, Melnick J. reviewed the principles that govern the determination of whether a matter is suitable for disposition by means of summary trial where the affidavit materials conflict. It is clear from the jurisprudence that the mere fact that the affidavits conflict is not an automatic bar to proceeding under the summary trial provisions: *Charest* at paras 56-59; *Leisure Aquatics* at para. 24.
- [50] The question instead is whether the conflicts in the evidence relate to essential issues that cannot be resolved on the evidence. Here, one of the essential issue, as I understand it, is whether the parties reached an oral agreement as to a five year lease of the property by the plaintiffs or whether the protracted negotiations between the parties failed to achieve any lease agreement such that there is only a tenancy at will or a month to month tenancy.
- [51] Where there is a head on conflict in the evidence that goes directly to the foundation of the matter, the court must proceed with caution. This is especially so where issues of credibility arise, as they clearly do in this case, that go directly to the foundation of either the plaintiffs' or defendants' case, the resolution of which requires findings of credibility to be made or preferring one view of the evidence to the other: *Charest* at paras. 54-61; *Lott* at para. 24.
- [52] In *Mayer v. Mayer*, 2012 BCCA 77 at paras. 82-83, the Court of Appeal noted that where issues of credibility arise it may well be unjust to proceed under the summary trial procedure without permitting a party to develop their case fully through examinations for discovery, cross-examination of the parties on their affidavits or through a conventional trial if necessary.
- [63] In *Charest v. Poch*, 2011 BCSC 1165 ["*Charest*"], at paras. 54-67, the Court determined that a summary trial was appropriate despite head-on conflicts in the evidence because of the existence of other documentary evidence. It also dealt with the issue of 'litigation in slices' at paras. 68-71.
- [68] The plaintiffs argue that the defendants are splitting their case such that proceeding under Rule 9-7 would encourage "litigation in slices". Hinkson J., as he then was, in 574409 B.C. Ltd. v. Spring Creek Aggregates Ltd., 2008 BCSC 1205 (B.C. S.C.) at paras. 57-58, described this issue as follows:

- [57] Litigation in slices was referred to by Southin J.A. for a unanimous British Columbia Court of Appeal in *Bacchus Agents (1981) Ltd. v. Philippe Dandurand Limited*, 2002 BCCA 138 at paras. 6-7, 164 B.C.A.C. 300 with respect to a summary judgment application in the following terms:

This is a useful rule intended to shorten litigation, thereby lessening its cost to the parties and to the public treasury and reducing delays in the process, it being an axiom, at least since Bacon's time, that justice delayed is justice denied.

When, however, as in this case, the rule is invoked to try "an issue" rather than the whole case - what I have often characterized as "litigating in slices" - it may become a hindrance to the "just, speedy and inexpensive determination" of the dispute "on its merits".

- [58] Although litigation in slices is to be discouraged, it cannot always be avoided or even anticipated if one party to litigation must react or respond to the steps taken by an opposing party or parties."
- [69] On this application, the defendants are asking the Court to determine if the plaintiffs' pleadings disclose an arguable cause of action that can be supported on the facts of the case. The concern is whether the application brought by the defendants, if resolved in their favour, will dispose of the whole proceeding. This was addressed by the Court in *North Vancouver (District) v. Fawcett* (1998), 1998 CanLII 4205 (BC CA), 162 D.L.R. (4th) 402, 60 B.C.L.R. (3d) 201 (C.A.) at para. 33:
- [33] With respect, it seems to me that if the answer to an issue sought to be tried under Rule 18A will only resolve the whole proceeding if one answer is given, but not if a different answer is given, then the applicant should be required to demonstrate, and the judge should be expected to decide, that the administration of justice, as it affects not just the parties to the motion, but also the orderly use of court time, will be enhanced by dealing with the issue as a separate issue...
- See also: *Stewart (District) v. Stewart Harbour Authority*, 2004 BCSC 8.
- [70] Here, the pleadings have been closed for over one year and examinations for discovery have been completed. The plaintiffs have filed additional affidavit evidence from John Martin and Mary Anne Martin. Additionally, the parties spent a full day arguing the merits of their cases before me on this application. The materials are not voluminous and the issues, despite the argument of the plaintiffs to the contrary, are not so complex such that it would be unjust to resolve the issues by way of summary trial. The cost of proceeding to trial would be a great expense to the parties.
- [71] In light of the foregoing, I conclude that the administration of justice will be enhanced by having this matter proceed under Rule 9-7, even if so doing may dispose of the entire matter if the result favours the defendants.
- [64] Despite the conflicts in the evidence, I conclude, for the reasons that follow, the evidence is such that I am able to determine the issue of whether the parties are spouses under the FLA.

- [65] Having said that, again for reasons that follow, I am unable to conclude that the claimant's claims in trust are capable of summary resolution given the conflict in the evidence.
- [66] I am mindful of the above quote from Charest regarding the admonition against litigation in slices. Here, in my view, resolution of the issue of the parties' status under the FLA will benefit the parties by: reducing the necessary time for trial on the remaining issues; reducing the expenses incidental to the litigation regarding witnesses who would otherwise need to travel from the Fernie area to the Lower Mainland; and lastly facilitating discussions of settlement with the focus only on those assets in the name of the respondent to which the claimant asserts a contribution.

## Spouses

Is the Claimant a Spouse for the purpose of the Act?

[67] Section 3(1) of the FLA states:

3 (1) A person is a spouse for the purposes of this Act if the person

- (a) is married to another person, or
- (b) has lived with another person in a marriage-like relationship, and
- (i) has done so for a continuous period of at least 2 years,

[68] A recent discussion from this Court as to the indicia of a 'marriage-like relationship' is found in *Mother 1 v. Solus Trust Corporation*, 2019 BCSC 200 ["Mother 1"], where, commencing at para. 132, Myers J. referenced the non-exhaustive list of indicia of a marriage-like relationship, noting the concept is "an elastic one". See, as well, *Hopson v. Hannon* 2020 BCSC 794 at paras. 119-121

[69] As noted in *Yakiwchuk v. Oaks*, 2003 SKQB 124, with which Frankel J.A. agreed in *Austin v. Goerz*, 2007 BCCA 586:

[11] Spousal relationships are many and varied. Individuals in spousal relationships, whether they are married or not, structure their relationships differently. In some relationships there is a complete blending of finances and property; in others, spouses keep their property and finances totally separate and in still others one spouse may totally control those aspects of the relationship with the other spouse having little or no knowledge or input. For some couples, sexual relations are very important; for others, that aspect may take a back seat to companionship. Some spouses do not share the same bed. There may be a variety of reasons for this such as health or personal choice. Some people are affectionate and demonstrative. They show their feelings for their "spouse" by holding hands, touching and kissing in public. Other individuals are not demonstrative and do not engage in public displays of affection. Some "spouses" do everything together; others do nothing together. Some "spouses" vacation together and some spend their holidays apart. Some "spouses" have children; others do not. It is this variation in the way human beings structure their relationships that make the

determination of when a "spousal relationship" exists difficult to determine. With married couples, the relationship is easy to establish. The marriage ceremony is a public declaration of their commitment and intent. Relationships outside marriage are much more difficult to ascertain. Rarely is there any type of "public" declaration of intent. Often people begin cohabiting with little forethought or planning. Their motivation is often nothing more than wanting to "be together". Some individuals have chosen to enter relationships outside marriage because they did not want the legal obligations imposed by that status. Some individuals have simply given no thought as to how their relationship would operate. Often the date when the cohabitation actually began is blurred because people "ease into" situations, spending more and more time together. Agreements between people verifying when their relationship began and how it will operate often do not exist.

[70] Recently, in *McDowell v. Andrews*, 2018 BCSC 2216 at para. 23, Matthews J. focussed on five factors:

- a) the parties' intentions, particularly that the relationship will be of lengthy, indeterminate duration;
- b) whether there is financial interdependence;
- c) whether the parties resided together and if so, whether they did so in the nature of roommates or in the nature of a couple;
- d) objective evidence of the parties' lifestyle and interactions; and
- e) whether the parties engaged in sexual relations and were intimate in the sense of fidelity and sharing personal information.

[71] In *Weber v. Leclerc*, 2015 BCCA 492 at paras. 22 and 25, the Court cautioned against a "checklist approach". Rather, the court should take a "holistic approach" when examining all the relevant factors.

[72] Lastly, as Schultes J. said in *Dey v. Blackett*, 2018 BCSC 244:

[235] While an intention to enter into a relationship similar to marriage - of an indeterminate, lengthy duration - is the essential requirement for finding a marriage-like relationship, a consideration of objective indicators are helpful as a means of testing the parties' professed intentions (or lack of intentions) in that regard, and may also form the basis of inferences as to what their intentions were. Put another way, while intention is the key, a partner who claims or disavows such an intention may not be believed if all of the surrounding circumstances strongly imply the contrary. All of that said, Takacs offers the reminder that relationships can fulfill many of the accepted indicators without the couple "intending or in fact entering the kind of psychological and emotional union that one associates with marriage."

- [73] To satisfy the requirements of s. 3(1), the claimant must demonstrate that, objectively, sufficient of the features necessary to equate to a marriage-like relationship existed from November 17, 2015 until the admitted date of separation, November 17, 2017.
- [74] In my view, the evidence, regardless of conflicts, does not satisfy that requirement. The claimant needs to establish not only the marriage-like relationship, which no doubt he has, but, as well, that it endured for a "for a continuous period of at least 2 years".
- [75] I accept the parties considered themselves in a spousal relationship by no later than March of 2016 following their reconciliation. However, it is clear that the relationship that culminated in the parties living together in 2016 was still in its formative stages in November of 2015, based on: the absence of evidence supporting a finding of the trappings of a marriage-like relationship by early-November 2015 (as suggested by the claimant); the documentary evidence of the respondent's credit card receipts for air travel; and an email regarding the respondent's 'visit' to the claimant on November 6, 2015 following the parties first getting together in-person in very late October 2015.
- [76] The evidence of Ms. Ehmann and Ms. Rizzuto do no more than establish the physical presence of the respondent in the claimant's residence in Fernie on an unspecified date in November 2015. They do not go the question of whether she was living there from mid-November onward or had formed an intention to permanently reside with claimant.
- [77] Neither provides evidence that the parties acted in a fashion giving rise to the objective conclusion that the parties were together as man and wife.
- [78] The claimant himself offers nothing more than the bald assertion that the parties, within less than three weeks of physically meeting one another, formed the intention to and began living in a marriage-like relationship which lasted two years.
- [79] He offers up, as proof of that assertion, the notes of the police officer who interviewed the respondent following an alleged assault of the respondent in March of 2016. The claimant relies on the constable's notes wherein he records the respondent saying that the parties had been in a domestic relationship for the past seven months.
- [80] The notes are inadmissible hearsay, as is the email from the former occupant of 20 Cedar Bowl Crescent, Mr. Johnson. The officer's note, however, on its face contradicts the acknowledged fact the parties did not physically meet one another until October 31, 2015. Prior to meeting, they chatted online through an online dating website beginning on September 15, 2015. They had not, on any version of the evidence, known each other for several years.
- [81] Nowhere does the claimant describe the respondent moving her possessions, specifically her clothing etc., from Burnaby to Fernie prior to the sale of her house in March of 2016.

- [82] The documentary evidence provided by the respondent, in particular her credit card receipts, lead to no other conclusion but that she remained, off and on, in the greater Vancouver area until the completion of the sale of her home.
- [83] It is common ground that she didn't come to the decision to sell her residence until January of 2016.
- [84] While I accept that the claimant travelled with the respondent to Victoria in December of 2015 no doubt to introduce the claimant to the respondent's mother given the progression of their relationship, there is no evidence, beyond the claimant's assertion, that the parties considered themselves in a marriage-like relationship from November 2015 onward until separation.
- [85] The evidence of Ms. Rizzuto, as to the parties living together when the respondent was introduced to her in November of 2015, is conclusory as to the nature of the relationship. It confirms only that the respondent was there on the day in question. The same applies to the evidence of Ms. Ehmann.
- [86] The email on November 2, 2015 put into evidence by the claimant speaks specifically to a "visit" on November 6, 2015. There is no suggestion that the relationship was permanent, albeit the respondent expressed her love for the claimant at the end of the communication.
- [87] Other than the physical presence of the respondent in the claimant's residence for a number of days throughout November and December 2015, there is nothing in the claimant's evidence to suggest that: the parties were sharing a bed; identified themselves to others as a couple; were inter-mingling their finances; or had committed to one another in the fashion described at length in Mother 1. All of those things came to pass, but not until after the sale of the respondent's property in March of 2016 and her permanent move to Fernie.
- [88] The respondent clearly returned to Vancouver following the initial personal contact. I find as a fact that the parties did not live continuously together for a continuous period of two years. The respondent clearly maintained a separate residence in Burnaby until well after November 2015 and, as proven by her credit card statements, actively resided in the Burnaby area for much of December 2015 and the first several months of 2016.
- [89] Nowhere does the claimant assert that they resided together other than in Fernie. He noted, and the respondent agreed, that they travelled to Vancouver Island together in December of 2015.
- [90] The evidence of Ms. Ford, the respondent, and the respondent's credit card statements from November 2015 to March 2016 make clear that the respondent spent significant continuous periods of time in the Lower Mainland.
- [91] Accordingly, I find that the claimant and respondent were never spouses within the meaning of the FLA and his claims thereunder are dismissed.

## The Trust Claims

- [92] The claims in trust as against the respondent's shareholding in 1110219 B.C. Ltd., the two Cedar Bowl Crescent properties, and 8 Black Rock Place present a different problem. There is sufficient conflict in the evidence between the claimant and respondent so as to make it, in my view, unfair to determine the matter in a summary fashion.
- [93] On first blush, it would appear that the claimant's assertion of trust is premised wholly on contributions made by him financially and otherwise to the betterment of the properties; particularly his work in overseeing construction on 8 Black Rock Place.
- [94] He also says that he provided improvements to 20 Cedar Bowl Crescent, which was the home in which the parties cohabited from the early stages of 2017 until separation.
- [95] However, in his evidence before me, the claimant deposes that he was instrumental in the acquisition of at least two of the properties, the Cedar Bowl Crescent properties, at discounted prices below their assessed value and that the parties orally agreed that he would gain an equity position in each based upon the difference between the purchase price and the assessed values of each of the two properties.
- [96] While noting that the B.C. property assessments are unreliable evidence as to actual market value, that does not undermine the heart of the suggested arrangement. If the parties agreed that the claimant was to take such a position based on the accuracy of the assessed values of property, it was open to them to make that agreement.
- [97] The claimant has not pleaded an express trust, but the pleadings are still capable of amendment.
- [98] The respondent denies any such arrangement, but that is purely a matter of credibility that is incapable of resolution simply by looking at the documents that each party has put forth going to the issue of whether or not the respondent was unjustly enriched by the claimant's efforts.
- [99] Another problem with the pleadings is that the claimant seeks a declaration that the respondent, Ms. Grover, holds 20 Cedar Bowl Crescent and 8 Black Rock Place in trust for him. She is not the owner of those two properties; rather 1110219 B.C. Ltd. is the registered owner and such was known to the claimant since their incorporation.
- [100] With that said, the absence of 1110219 B.C. Ltd. as a defendant/respondent in the proceedings is also capable of resolution upon application by the claimant to join it as a party.

- [101] The existence of the outstanding Provincial Court actions is problematic in that the claims collectively amount to seeking relief on grounds similar to those relied on in this proceeding. It is likely they are duplicitous and might constitute an abuse of process. However, this application seeks dismissal by way of summary trial; not dismissal under Rule 9-5(1) of the Supreme Court Civil Rules, B.C. Reg. 168/2009. As such, the apparent duplicity of the proceedings is not before me.
- [102] Finally, regarding the documents adduced by the parties in support of their respective positions as to whether contributions were made or detriments suffered, I am unable to determine from those documents, mainly banking statements, cheques with handwritten notations upon them, and emails which are impermissible hearsay, absent cross-examination and further explanation not provided for in the affidavit material, whether or not: the claimant can establish an enrichment of the respondent absent a juristic reason; or whether, as the respondent argues, she suffered a loss as a result of the failure of the claimant or the claimant's construction company to perform the work on 8 Black Rock Place in a substandard manner at a cost that exceeded that which she agreed to.
- [103] Accordingly, I am unable to determine the trust claims by way of summary trial.

#### The CPLs

- [104] The respondent seeks removal of the CPLs under s. 252 or 254 of the Land Title Act, R.S.B.C. 1996, c. 250.
- [105] Given that I have not dismissed the claimant's action founded upon trust, s. 254 has no application.
- [106] Section 252 of the Land Title Act reads as follows:

252 (1) If a certificate of pending litigation has been registered and no step has been taken in the proceeding for one year, any person who is the registered owner of or claims to be entitled to an estate or interest in land against which the certificate has been registered may apply for an order that the registration of the certificate be cancelled.

- (2) An application under subsection (1) must be made to the court in which the proceeding was commenced and must be brought
- (a) as an application in that proceeding, if the applicant is a party to the proceeding, or
- (b) by petition, if the applicant is not a party.
- (3) The registrar must, on application and on production of a certified copy of the order of the court directing cancellation under subsection (1), cancel the registration of the certificate of pending litigation.

- [107] The last step in the litigation prior to the respondent's application was in July of 2018. The respondent was ordered to provide a list of documents but has not complied. Section 252(1) is discretionary. In the *Wiest v. Middelkamp*, 2005 BCSC 1626 the test for exercising my discretion is set out at paras. 12-13 as follows:
- [12] In an application of this kind, where the applicant shows that no step has been taken in the proceeding for a period of one year, the court retains a discretion to disallow the remedy. However, prejudice to the owner of the land will be presumed, and the respondent bears the onus of proving that the prejudice is not serious or is outweighed by other factors which would make it unjust to cancel the certificate of pending litigation. See *Kal West Mechanical Inc. v. Bush* 1999 Carswell B.C. 774 (Cole J.) and *Wilson v. Hrytsak* (1997) 34 C.L.R. 2d 65 (Master Joyce).
- [13] In my opinion, the factors relevant to the exercise of the court's discretion in this type of application include the following:
- (a) Whether the respondent has given an acceptable explanation for the delay in prosecuting the claim;
  - (b) Whether, despite the presumed prejudice, no actual prejudice would be incurred by the applicant if the order was not granted; and
  - (c) Whether the respondent's claim for an interest in the land has at least a reasonable prospect of succeeding.
- [108] I earlier provided for the removal of the CPL on 8 Black Rock Place as a condition of the adjournment that I granted to the self-represented claimant so as to allow him to cure the evidentiary deficiencies in his material. 8 Black Rock Place was always intended as a commercial venture; i.e. to build a home on vacant land and then sell it. I presume, given no application has been made to approve a sale, the property remains listed. On any view, the respondent was not being prejudiced in respect of the removal of the CPL.
- [109] The referenced factors in *Wiest* were applied in *Motz v. McKean*, 2009 BCSC 1133, where the Court exercised its discretion to remove a CPL because: delaying the sale of the property potentially could have resulted in the applicant breaching a share sale agreement; and the respondent's argument for a constructive trust was likely to fail, with a monetary award being an adequate remedy instead.
- [110] Conversely, in *Jesson v. Wilkinson*, 2018 BCSC 1921, the Court declined to exercise its discretion to remove the CPL because the minor prejudice to the applicant was outweighed by the prejudice that the respondent would face if the constructive trust claim, for which there was sufficient evidence, was effectively dismissed.
- [111] Here, I find, after balancing the prejudice faced by both parties, the CPLs registered against the two Cedar Creek properties ought to be removed. The respondent is presumptively prejudiced by the continued impediment to enjoy the properties.

- [112] The claimant's current pleadings base his entitlement to an interest in the Cedar Creek properties based on modest contribution of either money or labour. The major claim of work performed was towards the Black Rock property where a new home was constructed.
- [113] The claimant has not asserted an acceptable reason for failing to progress with the litigation, or provided any prejudice that he will face if the CPLs are removed. He has also failed to comply with the document production order. Alongside the duplicity of the proceedings in the Provincial Court, the claimant has failed to articulate a need to preserve the two Cedar Bowl Crescent properties; one of which is occupied by the respondent and the other which is bare land. For these reasons, I find that the prejudice faced by the claimant has not outweighed that faced by the respondent.
- [114] Finally, I am not convinced of the strength of the claimant's argument for a property interest in the Cedar Bowl Crescent properties. I have considered the, albeit disputed, evidence tendered by the claimant supporting his claim for a constructive trust. However, the law sets out that instances of contributions of the magnitude alleged by the claimant generally, if successful, result in monetary compensation as opposed to the remedy of a constructive trust (*Peter v. Beblow*, [1993] 1 S.C.R. 980; and *Gawthorn v. Allan*, 2008 BCSC 1649).
- [115] For those reasons I order the removal of the CPLs from the two Cedar Bowl Crescent properties.

## Other Matters

- [116] I note there are other matters outstanding in the litigation for the return of property that are not addressed in the application. Specifically, there is the claim for the return of property which the claimant alleges to be his or belongs to RCL that the respondent retained following separation. There is also reference in the pleadings to a motor home of reasonably significant value which, from the documents before me, appears to have been registered in the parties' joint names. The motor home remains in the possession of the respondent.
- [117] Those matters remain unaddressed and will be resolved at trial. I understand a trial date has now been set.

## Costs

- [118] Given the divided success upon the application, costs of the application will simply be costs in the cause. The respondent received costs thrown away for the adjournment caused by the claimant's deficient materials.

"Harvey J."

## Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

**ORIGINAL SOURCE**        <https://www.bccourts.ca/jdb-txt/sc/20/15/2020BCSC1564.htm>

**CASE PAGE**                <https://chat.esheria.ai/case-law/canada/rizzuto-v-grover-2020>

Prepared on 29 October 2026 · Esheria