

CANADA / JUDGMENT

Rizzuto v. Grover

2025 BCSC 2127

COURT

Supreme Court of British Columbia

DECIDED

29 October 2025

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2025 BCSC 2127 Rizzuto v. Grover

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Rizzuto v. Grover,

2025 BCSC 2127

Date: 20251029

Docket: E54267

Registry: New Westminster

Between:

Garth Alexander Rizzuto and Rizzuto Construction Ltd.

Claimants

And

Susan Marie Grover and 1110219 B.C. Ltd.

Respondents

Before: The Honourable Justice Latimer

Reasons for Judgment

The Claimant, appearing in person and represented by S. Reveler:

G.A. Rizzuto

S. Reveler

Counsel for the Respondents:

K.J. Heinrichs

A.S. Kang

Place and Dates of Trial:

New Westminster, B.C.

May 5-9, 12-14, 2025

Place and Date of Judgment:

New Westminster, B.C.

October 29, 2025

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Introduction

- [1] This case arises from the breakdown of a romantic relationship.
- [2] Mr. Rizzuto and Ms. Grover first connected online in September 2015. They were in their sixties and were living in different cities. They were both married to third parties when they met and had both separated from their spouses. They were both contemplating divorce but had not yet finalized the proceedings. Ultimately, Mr. Rizzuto moved ahead with the dissolution of his marriage and Ms. Grover did not.
- [3] As this Court has already conclusively determined, Mr. Rizzuto and Ms. Grover did not begin living in a marriage-like relationship until after the first several months of 2016. Thereafter, Ms. Grover moved to Fernie, B.C., where Mr. Rizzuto was living and they resided together until their relationship ended on November 17, 2017.
- [4] As Justice Harvey explained in *Rizzuto v. Grover*, 2020 BCSC 1564, at para. 13, and as I will describe in more detail below:

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.

- [5] While in Fernie, B.C., Ms. Grover purchased and sold several properties as follows:
- a) Ms. Grover purchased a residential home at 1532 2nd Avenue, Fernie, B.C. ("1532 Property") for \$290,000 with a closing date of March 22, 2016. She sold the 1532 Property for approximately \$367,000 in or around June 1, 2017.
 - b) Ms. Grover purchased 20 Cedar Bowl Crescent, Fernie, B.C. ("20 Cedar Bowl") for \$575,000 with a closing date of July 29, 2016, and Ms. Grover purchased 18 Cedar Bowl Crescent, Fernie, B.C. ("18 Cedar Bowl") for \$125,000 with a closing date of July 29, 2016. I will refer to these two properties collectively as the "Cedar Bowl Properties".
 - c) Ms. Grover purchased 8 Black Rock Place, Fernie, B.C. ("8 Black Rock") for \$115,000 with a closing date of December 15, 2016.
 - d) Ms. Grover purchased a 2008 Itasca Sunrise 32H Motor Home ("Motorhome") for \$82,000 on or around May 2017.
- [6] Ms. Grover purchased each of these properties alone without financial contribution from Mr. Rizzuto and without a mortgage.

- [7] Weeks after the breakdown of this relatively short relationship, Mr. Rizzuto initiated this proceeding on December 7, 2017. At that time, Mr. Rizzuto filed a notice of family claim seeking, among other things:
- a) property division under the Family Law Act, S.B.C. 2011, c. 25 [FLA];
 - b) injunctive relief under the Law and Equity Act, R.S.B.C. 1996, c. 253 [LEA];
 - c) a declaration that Ms. Grover holds various assets and properties, including the Cedar Bowl Properties, 8 Black Rock, and various personal and corporate belongings pursuant to a constructive trust, resulting trust, or express trust in favour of Mr. Rizzuto and various related ancillary orders; and
 - d) a declaration that Ms. Grover owed Mr. Rizzuto fiduciary duties.
- [8] On October 23, 2020, this Court found that the parties were not spouses under the FLA and dismissed all Mr. Rizzuto's claims under the FLA. This Court concluded it was unable to determine the trust claims by way of summary trial: *Rizzuto v. Grover*, 2020 BCSC 1564 at paras. 91 and 103.
- [9] Pursuant to an order dated October 31, 2022, Mr. Rizzuto was granted leave to file an amended notice of family claim. The amendments included the addition of Rizzuto Construction Ltd. ("RCL") and 1110219 B.C. Ltd. ("Numbered Company") as parties to this proceeding. This Court ordered that if Mr. Rizzuto intended to proceed with claims against the Numbered Company, he was to apply to the Court pursuant to s. 360 of the Business Corporations Act, S.B.C. 2002, c. 57, within 30 days of pronouncement of the order, for a limited restoration of the Numbered Company to allow it to be party to this action.
- [10] On November 1, 2022, the claimants filed their amended notice of family claim. In the amended notice of family claim, among other things:
- a) The claims under the FLA are removed.
 - b) Claims are introduced that:
 - i. Mr. Rizzuto is entitled to an interest in the Motorhome based on express or resulting trust.
 - ii. The Numbered Company holds any interest in the Cedar Bowl Properties subject to Mr. Rizzuto's interest in them.
 - iii. Mr. Rizzuto is entitled to occupational rent related to Ms. Grover's exclusive use of the Cedar Bowl Properties.
 - iv. RCL is owed money by the Numbered Company in respect of services performed at 8 Black Rock and is entitled to damages for breach of contract or damages from unjust enrichment.
- [11] On November 28, 2022, Ms. Grover filed a response to family claim and counterclaim in which she sought a declaration that she was the sole owner of the Motorhome.

[12] Despite the October 2022 order, described above, and despite this Court's further urging that he consider doing so on December 13-14, 2022, Mr. Rizzuto made no application to restore the Numbered Company.

Issues

[13] In light of that procedural background, the issues for determination are:

- a) Whether Mr. Rizzuto has any interest in the Cedar Bowl Properties?
 - i. If so, is he entitled to occupational rent?
- b) Whether Mr. Rizzuto has proven any interest in 8 Black Rock and/or has proven that he is entitled to compensation for services rendered in relation to the construction of 8 Black Rock under either breach of contract, unjust enrichment, or quantum meruit?
- c) Whether either Ms. Grover or Mr. Rizzuto held an interest in the Motorhome in trust for the other?
- d) Whether Mr. Rizzuto is entitled to any compensation from Ms. Grover with respect to his personal possessions left behind in Fernie, B.C. or in the Motorhome?

[14] For reasons that follow, I have determined that the claimants' claims must be dismissed, and Ms. Grover's counterclaim granted.

Background Facts

[15] When the parties met in the Fall of 2015, Mr. Rizzuto owned and operated RCL which operated predominantly in the area of Fernie, B.C. RCL did home building and renovation. Mr. Rizzuto was also employed by Teck Mines.

[16] Ms. Grover was and is retired. She was at that time, living in Burnaby, B.C. She travelled to Fernie to visit Mr. Rizzuto on a number of occasions in 2015 and 2016. In March 2016, she decided to list her home in Burnaby for sale and move to Fernie.

[17] On March 17, 2016, there was an altercation between Mr. Rizzuto and Ms. Grover in Cranbrook, B.C. A bystander called the RCMP. Mr. Rizzuto was charged with assault ("First Charge") and entered into an undertaking that provided, amongst other things:

I undertake to abstain from communicating directly or indirectly with Susan Marie Grover and Suphatcha Charbonneau or from going to 1532 2nd Ave Fernie, BC.

[18] On March 29, 2016, this term of the undertaking was relaxed as follows:

You are not to have any contact, directly or indirectly with Suphatcha Charbonneau, unless in the presence of Susan Marie Grover, Andre Charbonneau or the RCMP.

If you are in contact with Susan Marie Grover and she asks you to leave you are to leave forthwith and not to have any further contact with Ms. Grover unless she initiates that contact.

- [19] After the relaxation of the terms of the undertaking, Mr. Rizzuto and Ms. Grover lived together continuously until mid-November 2017.
- [20] On August 17, 2016, the Crown directed a stay of proceedings in respect of the First Charge.
- [21] While in Fernie, B.C., Ms. Grover purchased and sold several properties as follows:
- a) Ms. Grover purchased the 1532 Property for \$290,000 with a closing date of March 22, 2016. She sold the 1532 Property for approximately \$367,000 in or around June 1, 2017.
 - b) Ms. Grover purchased 20 Cedar Bowl for \$575,000 with a closing date of July 29, 2016.
 - c) Ms. Grover purchased 18 Cedar Bowl for \$125,000 with a closing date of July 29, 2016.
 - d) Ms. Grover purchased 8 Black Rock for \$115,000 with a closing date of December 15, 2016.
 - e) Ms. Grover purchased the Motorhome for \$82,000 in or around May 2017.
- [22] When Ms. Grover purchased 8 Black Rock, it was a bare lot, and she planned to build a residence on it. Ms. Grover testified that she was concerned about personal liability with respect to the build, so she obtained advice on how to structure the build to protect herself from personal liability. She was advised to form a company and as a result, she caused the Numbered Company to be incorporated. Ms. Grover testified that she thought she transferred ownership of 8 Black Rock to the Numbered Company, but it turns out it was never transferred, and she continued at all material times to own it personally.
- [23] Mr. Rizzuto did not hold any shares or other interest in the Numbered Company.
- [24] It is uncontested that Mr. Rizzuto did not contribute any money to the purchase of these properties each of which was purchased by Ms. Grover without financing.

Analysis

Credibility

- [25] The credibility and reliability of the parties and other witnesses are important considerations in evaluating the claims advanced in this case.
- [26] In *Gill v. Gill*, 2024 BCSC 346, Justice Fleming (as she then was) reviewed the applicable legal principles:
- [131] Credibility or truthfulness and reliability or accuracy are related but distinct concepts. A truthful witness, for example, may be mistaken about what they observed or in their recollection. Also, credibility and reliability are not all or nothing concepts. I may believe some, all, or none of a witness', here a deponent's, evidence and attach different weights to different parts of their evidence: *R. v. R. (D.)*, 1996 CanLII 207 (SCC), [1996] 2 S.C.R. 291, [1996] S.C.J. No. 8 at para. 93.

[132] The basic approach to the assessment of the truthfulness of any interested witness was discussed many years ago in *Faryna v. Chorny*, 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354, [1951] B.C.J. No. 152 (C.A.) at 357:

In short, the real test of the truth of the story of a witness must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[133] *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296, identified several factors that may be considered in assessing credibility and reliability. Relevant here are: the capacity and opportunity of the witness to observe the events at issue; the witness's ability to remember those events; the ability of the witness to resist being influenced by their interest in recalling those events; internal and external inconsistency in the witness's evidence, meaning did their evidence change between direct and cross-examination (here between affidavits) or between prior statements and their evidence; whether the witness's evidence harmonizes with, or is contradicted by other evidence, particularly independent or undisputed evidence; and whether their evidence seems unreasonable, improbable or unlikely, bearing in mind the probabilities affecting the case.

[134] Related to the last factor, which captures the Chorny principle, judges are permitted if not expected to rely on their common sense and life experience in assessing reasonableness and plausibility. However, the law prohibits stereotypical reasoning or speculation about human behaviour from affecting the assessment of credibility. Bearing in mind the disputed allegations of family violence, it is well recognized that there is no typical victim, typical perpetrator or typical ways in which a victim or perpetrator will behave.

[135] It follows perhaps that the credibility of a witness (deponent) must be assessed in the context of the evidence as a whole. Lastly, credibility is not a numbers game. The fact that more witnesses say one thing and less say another, is not determinative. Instead it is the force of the evidence of any given witness or deponent that counts.

[27] I found Ms. Grover to be both credible and reliable, overall. Her testimony was thoughtful and, for the most part, measured. I could tell that she was upset with Mr. Rizzuto and uncomfortable with being cross-examined by him personally. However, she did not appear to let her emotions taint her evidence. She provided helpful details to assist the Court to make a determination on the merits. As I discuss at length below, her testimony was also largely consonant with the testimony of other disinterested witnesses and contemporaneous documents.

[28] By contrast, I have significant reservations about Mr. Rizzuto's credibility and the reliability of his evidence. Mr. Rizzuto acknowledged his poor recollection with respect to many financial matters, which are discussed at greater length below. On certain key issues, he testified he would defer to the testimony of other witnesses. He also significantly downplayed the financial stress he was under at key points in the material timeline. That financial stress was apparent in the independent documentary evidence and testimony of

independent witnesses that was led at this trial. Mr. Rizzuto was argumentative throughout most of the proceeding and his interpretation of events appeared to be clouded by his emotions and his desire to portray himself in a positive light. His account of the arrangements between the parties was also implausible considering the full context of their relationship which is described at more length below.

[29] I found the other witnesses generally credible.

[30] There are some issues with the reliability of certain witnesses which I will address as necessary.

The Cedar Bowl Properties

[31] With regard to the Cedar Bowl Properties, Mr. Rizzuto argues that Ms. Grover holds his half interest in these properties in trust for him.

[32] Ms. Grover argues she purchased clear title to the Cedar Bowl Properties for value and that Mr. Rizzuto has no interest in the Cedar Bowl Properties.

[33] I will briefly set out some background facts of relevance to the Cedar Bowl Properties before explaining why I reject Mr. Rizzuto's arguments that he has any interest in these properties.

[34] At the start of his relationship with Ms. Grover, Mr. Rizzuto was married to Ms. Janice Edwards.

[35] In or around January 2005, Mr. Rizzuto and Ms. Edwards purchased 20 Cedar Bowl as joint tenants. Mr. Rizzuto agreed that Ms. Edwards paid the down payment on 20 Cedar Bowl.

[36] Mr. Rizzuto and Ms. Edwards designed and built the residence at 20 Cedar Bowl.

[37] In or around April 2012, Mr. Rizzuto and Ms. Edwards purchased 18 Cedar Bowl to be held as joint tenants. 18 Cedar Bowl was a vacant lot in front of 20 Cedar Bowl, and it was purchased to protect the view for 20 Cedar Bowl. Mr. Rizzuto testified that he did not recall who paid the down payment for 18 Cedar Bowl.

[38] In or around April 2013, Mr. Rizzuto and Ms. Edwards remortgaged 20 Cedar Bowl. At this time, the mortgage on 18 Cedar Bowl was paid out. Mr. Rizzuto was removed from title to 20 Cedar Bowl.

[39] Ms. Edwards testified that the reason for this change was that she had more assets than Mr. Rizzuto did and a good salary. In contrast, she testified that Mr. Rizzuto had a history of a couple of bankruptcies, less assets, and a lower salary. In these circumstances, she testified the bank would not approve the mortgage with Mr. Rizzuto on title.

[40] Mr. Rizzuto disputed Ms. Edwards' account of their respective financial positions. He testified that he did not know whether his credit rating was worse than Ms. Edwards' and deferred to others on that question.

- [41] Ms. Edwards testified that both before and after remortgaging, she was primarily responsible for paying the mortgage. Ms. Edwards testified that Mr. Rizzuto may have contributed some money, but he did not have much left at the end of the month. Ms. Edwards testified that she also paid the taxes but that they shared things like utilities.
- [42] Ms. Edwards testified that later in 2013, her relationship with Mr. Rizzuto broke down and she decided to leave British Columbia and return to Ontario. Mr. Rizzuto continued to live at 20 Cedar Bowl and at this stage he assumed responsibility for the mortgage and the utilities.
- [43] Mr. Rizzuto testified that he began paying the mortgage in or around 2012; however, he acknowledged that he did not have a firm memory of this.
- [44] Given Mr. Rizzuto's admittedly poor memory with respect to financial issues between he and Ms. Edwards, I find that Ms. Edwards' testimony is more reliable. Her account that he started paying the mortgage in 2013 when she left British Columbia is more plausible given the history I have described above.
- [45] As set out above, Ms. Grover purchased the Cedar Bowl Properties with a closing date of July 29, 2016, for \$700,000 in total.
- [46] Mr. Rizzuto argues that this purchase price demonstrates that Ms. Grover got too good of a deal and I should find she gave no value for his half interest in these properties.
- [47] I reject this argument for the following reasons.
- [48] First, the notion that the Cedar Bowl Properties were impressed with a trust in favour of Mr. Rizzuto is inconsistent with the express terms of the contracts of purchase and sale in respect of the Cedar Bowl Properties. The contracts of purchase and sale included, among others, the following terms:
3. **TERMS AND CONDITIONS:** The purchase and sale of the Property includes the following terms and is subject to the following conditions:
- Cash for title to be free and clear of all financial encumbrances.
8. **TITLE:** Free and clear of all encumbrances except subsisting conditions, provisos, restrictions, exceptions and reservations, including royalties, contained in the Original grant or contained in any other grant or disposition from the Crown, registered or pending restrictive covenants and rights-of-way in favour of utilities and public authorities, existing tenancies set out in Clause 5, if any, and except as otherwise set out herein.
17. **REPRESENTATIONS & WARRANTIES:** There are no representations, warranties, guarantees, promises or agreements other than those set out in this Contract and the representations contained in the Property Disclosure Statement if incorporated into and forming part of the Contract, all of which will survive the completion of sale.

[Emphasis added.]

- [49] Mr. Rizzuto was a party to the contract of purchase and sale in respect of 18 Cedar Bowl. When asked whether Ms. Grover had insisted that the Cedar Bowl Properties had to be sold with clear title for her to complete the purchase, he testified he would defer to Ms. Grover. I accept Ms. Grover's evidence on this point that this was a critical element in her decision to purchase these properties.
- [50] The contracts of purchase and sale set out steps that Mr. Rizzuto was obliged to take to ensure title was passed free and clear of all encumbrances. They also enumerated excluded interests.
- [51] The contract of purchase and sale in respect of 20 Cedar Bowl further provided:
- 3 . Garth Alexander Rizzuto will be responsible to clear the Land Spouse Protection Act Charge and Certificate of Pending Litigation registered on title.
7. INCLUDED ITEMS: The Purchase Price includes any buildings, improvements, fixtures, appurtenances and attachments thereto, and all blinds, awnings, screen doors and windows, curtain rods, tracks and valances, fixed mirrors, fixed carpeting, electric, plumbing, heating and air conditioning fixtures and all appurtenances and attachments thereto as viewed by the Buyer at the date of inspection

Including: as currently in residence

But seller will provide detailed and itemized list of items considered excluding: personal property, (ie painting, ceramics clothing belonging to Janice Edwards, Janice Edwards will be responsible for taking deliver of these items (the buyer will cooperate in locating such items if still situated in the residence. Seller will be responsible for any courier charges etc associated with taking deliver of any items belonging to her and the buyer will allow the sellers agent or representative access to remove such items. The Property and all included items will be in substantially the same condition at the Possession Date as when viewed by the Buyer on Buyer has possession.

- [52] The contract of purchase and sale in respect of 18 Cedar Bowl further provided:
- 3 The seller, Garth Alexander Rizzuto will be responsible for clearing the Certificate of Pending Litigation on the property.
- [53] Mr. Rizzuto did in fact take steps to ensure title on both Cedar Bowl Properties was passed free and clear of all encumbrances by instructing his counsel to request cancellation of the certificates of pending litigation and the charge registered pursuant to the Land (Spouse Protection) Act, R.S.B.C. 1996, c. 246.
- [54] There is also no documentary evidence to support Mr. Rizzuto's contention that Ms. Grover held hundreds of thousands of dollars in trust for him. Nor was there a single witness, aside from the parties themselves, who testified that they heard any discussion about such an arrangement.

- [55] Second, the record does not persuade me that the purchase price paid is as inexplicably low as Mr. Rizzuto contends.
- a) First and foremost, there is no reliable evidence of the value of the Cedar Bowl Properties at the relevant time. There are no valuations in the record which are contemporaneous to the transfers to Ms. Grover.
 - b) The historical assessments in the record show that Ms. Grover might have gotten a good deal on the purchase, but do not prove that the purchase price paid by Ms. Grover was inexplicably out of step with the value of the Cedar Bowl Properties.
 - i. An appraisal prepared in 2013 valued 20 Cedar Bowl at \$1,000,000. This appraisal was not tendered as expert evidence but even if it had been, it was completed three years before Ms. Grover's purchase of the property.
 - ii. An insurance replacement cost evaluation prepared in 2014 valued the replacement cost of the residence on 20 Cedar Bowl at \$831,585. This evaluation was not tendered as expert evidence but even if it had been, it was completed two years before the sale and is estimating replacement cost, not the market value of the property.
 - iii. The property tax assessments for the Cedar Bowl Properties placed their values substantially lower than what Mr. Rizzuto claimed their values to be. The 2017 property tax assessment would relate to the value of the Cedar Bowl Properties in 2016. I take note of the fact that property tax assessments are some evidence but not particularly reliable indicators of the value of a property.
- (1) The property assessment roll report value of 20 Cedar Bowl was:
 - (a) 2014: \$757,000
 - (b) 2015: \$783,000
 - (c) 2016: \$774,000
 - (d) 2017: \$736,000
 - (e) 2018: \$808,000
 - (2) The property assessment roll report value of 18 Cedar Bowl was:
 - (a) 2014: \$196,000
 - (b) 2015: unknown
 - (c) 2016: \$202,000
 - (d) 2017: \$154,000
 - (e) 2018: \$194,000

- c) While Ms. Grover paid less than the assessed values, and less than the list prices, the long period that the Cedar Bowl Properties sat on the market without being sold suggest that the properties may have been overpriced. With respect to the total price of \$700,000 paid in July 2016, Ms. Edwards testified that they were asking more than a million at the time, so this was a big drop in price. On the other hand, Ms. Edwards testified that they had been waiting a long time for any interest in the listing. Ms. Edwards testified that she and Mr. Rizzuto had listed the Cedar Bowl Properties with several agents, possibly as early as 2011 but certainly by 2012. Ms. Edwards testified that they adjusted the price downward several times but had no offers. Mr. Rizzuto thought there might have been an expression of interest but agreed they had been unable to find a purchaser for the Cedar Bowl Properties at any of the previous list prices.
- d) Ms. Edwards was a disinterested witness in this proceeding, and she testified that the price of \$700,000 seemed reasonable to her in the circumstances. At a certain point, Mr. Rizzuto had stopped making mortgage and car payments for Ms. Edwards in an effort to get her to agree to the terms of their separation agreement. While Mr. Rizzuto claimed that this was a strategy recommended by Ms. Grover, he acknowledged that it was ultimately his decision. Ms. Edwards had retired at that point and did not have a lot of income. Ms. Edwards testified that she was in a position where \$700,000 looked alright. It would have been nice to get more but she was relieved by the offer.
- e) I accept Ms. Grover's evidence that she uses a formula to determine how much she can invest in real estate. Her formula indicated that the amount she had to spend was \$700,000. If she could not get the Cedar Bowl Properties for that price, she was prepared to walk away and purchase something else. In other words, the purchase price was the product of her own calculations, not of negotiations with Mr. Rizzuto.
- [56] Third, Mr. Rizzuto's position at this trial is inconsistent with the express terms of the Agreement and Release Mr. Rizzuto and Ms. Edwards entered into on June 23, 2016 ("Agreement and Release").
- [57] Ms. Edwards testified that Mr. Rizzuto never discussed with her that his interest in either of the Cedar Bowl Properties would remain when those properties were sold to Ms. Grover. Ms. Edwards testified, and I accept, that she never made a deal with Mr. Rizzuto to lower the sale price for the Cedar Bowl Properties in order to preserve his interest in them.
- [58] I accept Ms. Edwards' testimony because it is consistent with the Agreement and Release. The Agreement and Release provides in part as follows:

Recitals

A . Janice and Garth jointly own property at 18 Cedar Bowl Crescent, Fernie, BC ("Lot 18), and Janice solely owns Janice and Garth's former matrimonial home at 20 Cedar Bowl Crescent, Fernie, BC (the "Home").

B. Janice and Garth separated approximately 3 years ago. Janice resides in Ontario; Garth resides in the Home with the prospective purchaser of the Lot and the Home.

C. There are offers to purchase both Lot 18 (\$125,000.00 purchase price offer) and the Home (\$575,000.00 purchase price offer) with the proposed closing date of July 29, 2016, on terms which include Janice paying the buyer's property transfer tax on both transfers (\$9,500.00 and \$1,250.00 respectively), the entire unadjusted 2016 City of Fernie Property taxes for both properties (\$5,856.09 and \$1,614.00 respectively), the entire payout amount of the Bank of Nova Scotia Mortgage on the Home (approximately \$400,000.00), and the Rockies Law solicitor's lien registered against the Home (\$14,000.00 approximately, for deferred property taxes paid by Rockies Law on Janice and Garth's behalf).

Sale of Home and Lot

1. Janice will accept the buyer's offer to purchase the Home, and Janice and Garth will each accept the buyer's offer to purchase the Lot, on the terms set out in the Contracts of purchase and Sale, certain of which are set out above, and including a term in each contract that Garth execute and deliver this executed Agreement and Release to Janice's solicitors, to be held by the solicitor and not released to Janice or otherwise dealt with or used prior to the completion of the sale of the Home and Lot.
2. In consideration for payment of \$10.00, Garth does hereby remise, release and forever discharge Janice from any and all actions, claims, suits, debts, demands, damages, interest, costs, expenses and compensation of whatsoever kind and howsoever arising, whether known or unknown, which the Garth [sic] has or at any time hereafter can, shall or may have in any way, including any change of circumstances, but not limited to those resulting or arising from the sale of the Home or Lot, including any Family Law claims and specifically any and all actions, claims, suits, debts, demands, damages, interest, costs, expenses and compensation against any part whatsoever of the net proceeds of the sale of the Home or Lot, and further agrees that the full net proceeds of the sale of the Home and Lot are to be paid upon completion to Janice's solicitors, in trust, to be disbursed on Janice's sole direction only, and not in any amount or manner to Garth, his solicitors or anyone else on his behalf.

[Emphasis added.]

[59] Thus, the Agreement and Release did not contemplate that any portion of the value of the Cedar Bowl Properties would be held back in trust for Mr. Rizzuto. It was express that the properties were being sold "on the terms set out in the Contracts of Purchase and Sale". It was also express that the net proceeds from the sale of the Cedar Bowl Properties were to be disbursed on Ms. Edward's direction only, and not to Mr. Rizzuto.

- [60] Mr. Rizzuto argues that absent a finding that half of the interest in the Cedar Bowl Properties was being held in trust in his favour, this description of the division of property lacks credibility because it would have been unfair in the context of his family law litigation with Ms. Edwards. He argues he was a presumptive 50% owner of the Cedar Bowl Properties, regardless of the state of title on 20 Cedar Bowl. It would be unfair for him to receive no benefit from the sale of those properties.
- [61] There are several difficulties with this argument.
- [62] First, I have not been provided with sufficient particulars of the divorce settlement between Mr. Rizzuto and Ms. Edwards to permit me to conclude that the sale of the Cedar Bowl Properties was without benefit to Mr. Rizzuto. One clear benefit is set out above, which is that Ms. Edwards alone was responsible to pay more than half the value of the purchase price (over \$432,000) to discharge various liabilities secured against 20 Cedar Bowl. While I have been shown a draft separation agreement, I have not been provided with any final or signed separation agreement or other documentation that would give me a fuller view of the arrangements made between the parties in support Mr. Rizzuto's argument.
- [63] Second, even based on the evidence before me, I do not accept that Ms. Grover's purchase of the Cedar Bowl Properties was without benefit to Ms. Rizzuto. In addition to the discharge of the various liabilities addressed above, I find that Ms. Grover's purchase of the Cedar Bowl Properties benefited him in a number of ways including:
- a) He was no longer required to pay for the mortgage. Mr. Rizzuto's evidence was that at the time he was paying approximately \$1,750 per month for the mortgage.
 - b) He was no longer required to pay property taxes, insurance, or maintenance on the Cedar Bowl Properties which he had been paying since Ms. Edwards moved to Ontario.
 - c) He was permitted to continue residing at 20 Cedar Bowl and thus received free accommodation.
 - d) He was permitted to continue operating his business out of 20 Cedar Bowl and thus received free office space.
 - e) He was permitted to continue storing a large amount of equipment at the Cedar Bowl Properties free of charge.
- [64] Finally, I find Mr. Rizzuto's evidence that Ms. Grover was holding his half interest in the Cedar Bowl Properties in trust for him to be implausible in light of the context of their relationship at the time.
- [65] This was a relatively new relationship that had already had a significant bump in the road, being the incident that led to the First Charge.

- [66] With respect to the incident that led to the First Charge, Mr. Rizzuto acknowledges that he was extraordinarily angry with Ms. Grover. Mr. Rizzuto testified that what angered him was that he was trying to get the paperwork together to complete the sale of the Cedar Bowl Properties to Ms. Grover. Ms. Grover stated that she did not want a mortgage and attempted to cancel the deal. Mr. Rizzuto testified that Ms. Grover wanted to force Ms. Edwards into bankruptcy in order to try to get the Cedar Bowl Properties for less money. Mr. Rizzuto testified that he did not want to hurt Ms. Edwards and just wanted a fair deal. The argument became heated.
- [67] He denied assaulting Ms. Grover. He argues that the fact that the criminal charge was stayed is evidence that the assault did not occur and testified that eventually Ms. Grover admitted that she was responsible for the argument and that it had been blown out of proportion.
- [68] Ms. Grover gives a significantly different account. She testified that in mid-March 2016 she did not want to invest a lot because she was new to the area, but that she found a little property and purchased the 1532 Property for approximately \$300,000.
- [69] She testified that her daughter-in-law needed to attend Service Canada in Cranbrook, British Columbia, and that Mr. Rizzuto told them he also had business in Cranbrook that day and would drive them down.
- [70] Ms. Grover testified that she was assisting her daughter-in-law at Service Canada and she heard Mr. Rizzuto becoming very angry and yelling. Ms. Grover testified that she then saw him storm out of the building.
- [71] Ms. Grover testified that she and her daughter-in-law finished their business and went outside. She testified that he was walking up and down the sidewalk and was very agitated and yelling but she did not know why.
- [72] Ms. Grover testified that when they approached him, he yelled at them to get in the truck and that he used many expletives. She testified that they were very frightened, and she told him they were not getting in the truck with him in this state. Ms. Grover testified that he grabbed her arm and pulled her towards the truck. She testified that her daughter-in-law grabbed her from behind to keep her from getting into the truck. Ms. Grover testified that he then pushed her and grabbed Ms. Grover by the collar, hauling her into the truck.
- [73] Ms. Grover testified that a bystander came by and asked if they were in trouble. She testified that Mr. Rizzuto told him to mind his own business. The bystander left.
- [74] Ms. Grover testified that about five minutes later the anger was gone, and he asked her to please get in the truck. She testified that they had no other means of getting home so they got back into the truck.
- [75] She testified that twenty minutes outside of Cranbrook the RCMP called and asked if she was okay and she said she did not think so. The officer asked if Mr. Rizzuto was with her and she said yes. The officer directed her to go directly to the police station.

- [76] Immediately after that call, Ms. Grover testified that Mr. Rizzuto's cell phone rang, and it was the RCMP. She could hear the officer tell him the same thing because the phone was on speakerphone. Therefore, Ms. Grover testified that they did go directly to the police station and Mr. Rizzuto was placed in handcuffs. She testified that she and her daughter-in-law were separated and gave sworn statements about what had happened. She had photographs taken of bruises on her arm and neck. Eventually, Ms. Grover testified that she and her daughter-in-law were released.
- [77] Ms. Grover testified that they were told not to go back to 20 Cedar Bowl. She arranged to stay in a hotel for a couple of nights and then decided to move into the 1532 Property. They arranged to move in before the closing date.
- [78] Overall, I find Ms. Grover's account to be more credible. It was significantly more detailed than Mr. Rizzuto's. Mr. Rizzuto's explanation of the cause of his anger does not line up with the offer made by Ms. Grover on the Cedar Bowl Properties. In any event, I need not resolve exactly what occurred between Mr. Rizzuto and Ms. Grover in the incident leading up to the First Charge, nor whether it has been proven on the civil standard that an assault occurred.
- [79] For the purposes of this proceeding, what is significant is that there was a significant dispute that resulted in third-party and police involvement. I accept that the dispute was very disturbing and frightening to Ms. Grover. Ms. Grover fairly acknowledged that their relationship had its ups and downs after this dispute. Nevertheless, overall, I accept Ms. Grover's evidence that after the First Charge, her relationship with Mr. Rizzuto was altered and she no longer trusted him.
- [80] Although she moved in with him, she was determined to keep her affairs separate and she took clear steps to ensure that she did so. Ms. Grover testified, and I accept, that she made it clear to Mr. Rizzuto that what was her business, her family, and her finances would always remain hers. She testified that she told him they would not comele their finances or business ventures in any way. Therefore, when she returned to 20 Cedar Bowl, she paid for her things, and he paid for his.
- [81] In all these circumstances, I cannot find that Mr. Rizzuto had any interest in the Cedar Bowl Properties. He has advanced several different legal avenues to establish such an interest which I will address here.

Resulting Trust

- [82] A resulting trust arises when title to property is in one party's name, but that party, because he or she is a fiduciary or gave no value for the property, is under an obligation to return it to the original title owner: *Pecore v. Pecore*, 2007 SCC 17 at para. 20.
- [83] A rebuttable presumption of resulting trust arises with respect to gratuitous transfers because equity presumes bargains not gifts: *Pecore* at para. 24.

[84] In this case, as I have set out above, there was no gratuitous transfer. Ms. Grover has established that she purchased the Cedar Bowl Properties for value and that Mr. Rizzuto did not contribute towards the purchase price of those properties.

[85] As there was no gratuitous transfer of property in this case, Mr. Rizzuto's claims to a resulting trust in respect of the Cedar Bowl Properties are dismissed.

Express Trust

[86] Express trusts are established when the certainties of intention, subject, and object have been established, and the property has been vested in the trustee: *Xu v. Hu*, 2021 BCCA 2 at para. 12.

[87] The onus of establishing each of the certainties lies with the party asserting the trust's existence: *Xu* at para. 13.

[88] The settlor's intention is the critical element for the creation of an express trust: *Xu* at para. 15. However, it is not enough for the purported settlor to intend for another party to benefit; they must have intended for the other party to benefit on trust: *Xu* at para. 16. Where the intention to benefit is clear, the crucial inquiry is whether the donor intended the property as a gift or as a trust: *Xu* at para. 16.

[89] Mr. Rizzuto has not met his onus of establishing any certainty of intention. As I have set out above, Ms. Grover purchased the Cedar Bowl Properties for value. I have rejected Mr. Rizzuto's evidence that there was any arrangement to hold half of the interest in trust for him. Ms. Grover testified there was no such intention.

Unjust Enrichment

[90] Mr. Rizzuto has also argued that there has been an unjust enrichment. There are three requirements to be satisfied before an unjust enrichment can be said to exist:

- a) an enrichment;
- b) a corresponding deprivation; and
- c) an absence of any juristic reason for the enrichment.

Pettkus v. Becker, [1980] 2 S.C.R. 834, 1980 CanLII 22 (S.C.C.) at 848.

[91] In this case, with respect to the purchase of the Cedar Bowl Properties, I do not find that Ms. Grover was enriched by Mr. Rizzuto. As I have set out at length above, nothing was given by him to her. For the same reason, there was no deprivation. Rather, she paid to acquire the Cedar Bowl Properties for value. The juristic reasons for the transfers were the contracts for purchase and sale.

[92] Mr. Rizzuto gave some vague evidence that he contributed towards the maintenance of the Cedar Bowl Properties during his cohabitation with Ms. Grover.

- [93] Ms. Grover testified that Mr. Rizzuto built a raised flower bed but that it was an eye sore and that he did so without consulting her. She testified that he also built a fence around 18 Cedar Bowl; however, she did not ask him to do that. She testified that she was shocked and asked what was going on but that she did not wish to push her limits because of his temper so she dropped it. Ms. Grover testified that the neighbours were upset and petitioned the city to have the fence removed. The fence was of terrible quality. Ms. Grover testified that she had some professional fencing people come to see if they could fix it after separation, but they told her it would need to be removed and rebuilt at great expense. She opted not to proceed with that repair. Instead, she undertook extensive landscaping on the property at her own cost and effort.
- [94] I cannot conclude that Mr. Rizzuto's so called "improvements" amounted to an enrichment for Ms. Grover. The work described was minor and Ms. Grover did not ask to have it performed. In general, the person who renders services to another who has neither requested them nor freely accepted them, in circumstances where they ought to have known that they were not to be rendered gratuitously, has no right to recover remuneration: *Pemberton Homes Realty Ltd. v. Miller*, 2008 BCSC 1790 at paras. 70-71 [*Pemberton Homes*].
- [95] Ms. Grover had to pay money to have the fence removed. The work provided no lasting value which is another reason this claim must fail: *Pettipas v. Pettipas*, 2010 BCSC 1669 at paras. 61-63.
- [96] As for other contributions, Ms. Grover also produced bank statements proving that the utilities came from her bank account.
- [97] Mr. Rizzuto testified that he gave Ms. Grover a credit card to use to purchase various things. However, I accept Ms. Grover's evidence that he provided her with a debit card to pay for RCL related expenses in her role as office manager. I do not accept that Ms. Grover used the debit card for her personal expenses nor for upkeep at the Cedar Bowl Properties.
- [98] In any event, Mr. Rizzuto had the use and enjoyment of the Cedar Bowl Properties over the relevant period free of charge. He has not established that any benefits he conferred on Ms. Grover were higher than fair market value of his use and enjoyment of those properties: *Gill v. Gill*, 2021 BCSC 270 at para. 39.
- [99] In these circumstances, the claim for unjust enrichment is dismissed.

Occupational Rent

- [100] Mr. Rizzuto has pleaded for occupational rent in his amended notice of family claim. Such a claim requires proof that he is a co-owner of the Cedar Bowl Properties: *Naidoo v. Naidoo*, 2025 BCSC 1340 at para. 288. I have found that he is not.
- [101] Even if I am wrong about that, I would dismiss the claim for occupational rent for the additional reason that a claim for occupational rent between non-spouses requires proof of exclusion or ouster by one co-owner, or a finding of unjust enrichment justifying an

equitable remedy: *Henderson v. Henderson*, 2012 BCCA 31 at paras. 44, citing 2000 BCCA 6 at para. 23; *Armstrong v. Kotanko*, 2023 BCSC 989 at paras. 71-72, aff'd 2023 BCCA 321. Mere occupation by one co-owner, without exclusion of the other, does not give rise to a claim for occupational rent: *Henderson* at para. 44, citing 2000 BCCA 6 at para. 23.

[102] Here I have found no unjust enrichment.

[103] I also find there was no exclusion or ouster by Ms. Grover. As I will explain in greater detail below, Mr. Rizzuto left the Cedar Bowl Properties in November 2017 following a second incident between himself and Ms. Grover for which he was charged with assault and uttering threats ("Second Charges"). He was eventually released on bail and the conditions of his bail included:

- a) You must have no contact or communication, directly or indirectly, with Susan Grover except through your lawyer for the limited purpose of resolving any division of asset [sic] family matters.
- b) You must not go to or be within 50 meters of the residence of Susan Grover located at both 8 Blackrock Place and 20 Bowl Crescent in Fernie, British Columbia, unless you are in the presence of a peace officer for the limited purpose of removing your personal effects otherwise you are to, at no time, be in the community of Fernie, British Columbia, except for attending court in Fernie on your outstanding criminal charges.

[104] A year later, on November 27, 2018, he was found not guilty of the Second Charges.

[105] Nevertheless, the conditions of his bail made continued cohabitation with Ms. Grover impossible. After he was found not guilty and the Second Charges were stayed, he never attempted to return.

[106] The claim for occupational rent is dismissed.

8 Black Rock

[107] With regard to 8 Black Rock, Mr. Rizzuto argues that Ms. Grover paid no value for his work at 8 Black Rock and therefore, either owes him payment for his work or for the increase in value of the property that his work provided gratuitously.

[108] I will explain the circumstances leading to Mr. Rizzuto's work at 8 Black Rock and then explain why I have rejected his contention that Ms. Grover owes him payment for his work or that she gratuitously obtained the increase in the value of 8 Black Rock brought about by his work.

[109] Ms. Grover purchased 8 Black Rock in December 2016 for \$115,000. It is uncontested that she was solely responsible for paying the purchase price for 8 Black Rock.

[110] Ms. Grover intended to build a house and then resell 8 Black Rock for a profit. Mr. Rizzuto offered to build the house at 8 Black Rock.

- [111] Ms. Grover and Mr. Rizzuto both testified that the arrangement between them included that Mr. Rizzuto would build the house for \$250,000, and that he would provide labour and materials at cost, without a mark-up. Mr. Rizzuto testified that he never asked to be paid for his services, and he did not keep track of his hours. He testified those hours were gifted into the building.
- [112] However, Mr. Rizzuto claims that it was agreed that he would charge a 10% management fee which would be payable upon the sale of 8 Black Rock.
- [113] Ms. Grover disputes that any such agreement about a management fee was made.
- [114] For reasons I will explain, I believe Ms. Grover's description of the arrangement struck between the parties.
- [115] Ordinarily, Mr. Rizzuto would have charged a management fee in respect of a project like this. However, there are several credible reasons why no such fee was charged in this case.
- [116] First, since at least early 2016, Ms. Grover had worked on a full-time basis for RCL. Mr. Rizzuto testified that she had started working for him even earlier, in October 2015.
- [117] Mr. Rizzuto challenged how many hours Ms. Grover worked; however, he did not challenge that she was essentially working full-time. I accept Ms. Grover's account of the time she spent working for RCL. Mr. Rizzuto was often away at different job sites and was not there to observe her. She was in the best position to describe her day-to-day tasks, in detail. She testified that her work with RCL was very time-consuming and she worked from approximately 7:30 in the morning until 8:00 or 9:00 at night during weekdays, and three to four hours over the weekend.
- [118] After the First Charge, despite the no contact order, she continued to pick up mail for RCL when Mr. Rizzuto was not at the property. She also continued to assist with employee issues like payroll and recording hours.
- [119] After the relaxation of the terms of the undertaking for the First Charge, her work for RCL went back to normal. She continued working for RCL until their separation in November 2017. The work was seasonal and was busier between March and November than it was over the winter months.
- [120] It is uncontested that aside from approximately \$850 in respect of a driving assignment over three days, she was not paid for her work at RCL. Ms. Grover testified, and I accept, that she had sought payment from Mr. Rizzuto.
- [121] I find that Mr. Rizzuto's agreement to build 8 Black Rock without charging for his labour, including no management fee, was, in part, to offset Ms. Grover's unpaid labour for RCL.
- [122] Second, and despite Mr. Rizzuto's testimony to the contrary, I find that securing the work to manage the 8 Black Rock project was a benefit to Mr. Rizzuto. He was working on another project on the same cul-de-sac at the time, located at 1 Black Rock Place. However, the

project at 1 Black Rock Place was smaller and could not keep his labourers engaged on a full-time basis. If he could not keep his labourers fully engaged, he would lose them to the competition. Securing the 8 Black Rock project enabled him to keep his labourers employed on a full-time basis. His oversight of the project at 8 Black Rock did not require him to travel to another location so it was not a large addition to his duties.

- [123] The contemporaneous documentary evidence is also consistent with Ms. Grover's account of the terms of their agreement.
- [124] Construction started in March 2017. RCL oversaw the construction of the residence at 8 Black Rock. The subcontractors were engaged by RCL.
- [125] Ms. Grover testified that until October 2017, RCL billed either Ms. Grover or the Numbered Company, and she paid RCL for materials and labour. Those payments were deposited into RCL's account.
- [126] The invoices that have been tendered in evidence include a line item for a 10% management fee for subcontractors, and another for materials, but no management fee was charged. Mr. Rizzuto did not give evidence that it was his standard practice, despite this line item, to wait until a year after the end of a project to charge the management fee.
- [127] Nevertheless, by invoice dated December 31, 2018, and received by Ms. Grover's legal counsel in 2019, over a year after their separation and the commencement of this proceeding, RCL invoiced Ms. Grover's Numbered Company \$28,903 plus GST for a management fee associated with the construction at 8 Black Rock. This invoice has not been paid.
- [128] It is worth noting that the timing of this invoice is also not consistent with Mr. Rizzuto's account of the arrangement between the parties because in December 2018 or January 2019, 8 Black Rock had not yet been sold.
- [129] The timing of the delivery of the invoice, and everything that transpired starting in late October 2017, undermines the credibility of Mr. Rizzuto's claim that any such sum is owing.
- [130] In October 2017, I find that Mr. Rizzuto experienced a significant cash flow problem which he greatly minimized in his testimony.
- [131] He was fired from his job with Teck Mines.
- [132] As well, he had run into considerable problems with the construction at 1 Black Rock place because he had found an underground stream flowing through the property.
- [133] He testified that he was also owed approximately \$125,000 by a different company, Farmer Construction.

- [134] Also, in 2017 Mr. Rizzuto was assessed as owing over \$40,000 to the CRA. Mr. Rizzuto testified that years later he was able to revise that assessment with the assistance of an accountant. However, that eventuality was not known to him in 2017 as he was facing a debt of over \$40,000.
- [135] Ms. Grover testified that in October 2017, Mr. Rizzuto wanted Ms. Grover to lend him \$50,000. Ms. Grover had lent him money on three or four occasions previously and had not been paid back, and she had no intention of lending him any more money. Mr. Rizzuto then stated, for the first time, that he wanted an interest in the Cedar Bowl Properties. Ms. Grover testified that she was stunned and asked him what he was talking about. She told him she owned those properties free and clear and he said, "we'll see about that". Ms. Grover testified that she left at that point because she did not want the argument to escalate. That was the first time she heard him mention an interest in the Cedar Bowl Properties.
- [136] This was denied by Mr. Rizzuto.
- [137] Due to the cash flow problem in October 2017, despite Ms. Grover upholding her end of the bargain and paying RCL for the labour and supplies being used at 8 Black Rock, RCL's cheques to pay labourers and supplies started to be returned for insufficient funds. Ms. Grover became concerned that the workers would place liens on her property. She therefore began to pay the subcontractors directly including paying at least two invoices twice-once to RCL and once to a worker directly.
- [138] After these two double payments, Ms. Grover approached Mr. Rizzuto with her concerns. She testified, and I accept, that he told her it was the least of his problems and walked away.
- [139] Ms. Grover testified that Mr. Rizzuto was not present very much at 8 Black Rock during this period. The workers were not getting instructions about what to do every day and they would phone Ms. Grover and ask what to do. Coupled with his failure to pay labour and supply expenses, Mr. Rizzuto was not living up to his end of the bargain.
- [140] Mr. Rizzuto denied that he stopped working at 8 Black Rock in mid-October 2017. He testified that November 14, 2017, was the last day he worked. Mr. Rizzuto testified that on November 15, 2017, Ms. Grover fired RCL.
- [141] In contrast, Ms. Grover testified that Mr. Rizzuto told her that he was leaving Fernie permanently and not coming back on November 16, 2017. He left permanently on November 17, 2017. She says she never fired RCL.
- [142] I find Ms. Grover's testimony to be more believable. As I have set out above, Mr. Rizzuto's testimony about this period greatly minimized the financial stress he was under. He wrongly sought to blame Ms. Grover for his financial difficulties because of the work she did for RCL. When asked about whether the bank was applying funds he received from Ms. Grover to pay off his other debts, he did not know and testified this was above his pay grade.

- [143] Mr. Rizzuto deferred to Ms. Grover as to whether the cheques he was providing to the workers were bouncing. Documentary evidence showed that in November some cheques made out to workers were returned for insufficient funds. If Mr. Rizzuto had been present on the job site as he claims, I imagine these concerns would have been brought to his attention. Mr. Rizzuto did not know whether those workers had been paid. He testified that he did not pay them. Mr. Rizzuto testified that he did not know whether Ms. Grover paid the workers. Documentary evidence shows she did.
- [144] Ms. Grover testified, and I accept, that she viewed her relationship with Mr. Rizzuto as extremely dangerous at this time because he had become very aggressive and volatile. He would yell and throw things, and she was frightened. In this context, I find it is unlikely that she would have taken the step to fire RCL. I find her account of her actions more plausible. She simply started paying the workers directly.
- [145] Ms. Grover testified that in November 2017, Mr. Rizzuto was in a high state of agitation and anger. He told her he was leaving and did not want anything to do with her, Fernie, or 8 Black Rock. Ms. Grover testified that he stated that there was a lot of work available in the lower mainland without all this hassle. Ms. Grover testified that he gathered up some of his belongings and left.
- [146] When he left, Ms. Grover testified that she checked a CIBC joint account that they had. This was a very small account that had funds for her to pay for office expenses when he was away. It also had an overdraft. When she checked it, \$300 was owing on the overdraft. She paid that off and closed the account.
- [147] Ms. Grover testified that the next day Mr. Rizzuto returned and told her he had slept in his truck overnight and was very cold. He had noticed that the joint account had been closed. Ms. Grover testified that he said he needed to stay overnight and gather some things to pawn on his way to the lower mainland. He stated he would stay in the basement and be gone at 6:30 AM the next morning.
- [148] Mr. Rizzuto agreed that he left and then came back for lack of money. He testified that he agreed to stay in the basement.
- [149] Their versions of events diverge at this point.
- [150] Ms. Grover testified that Mr. Rizzuto did not stay in the basement. He came up to her bedroom and was pounding on the door. Ms. Grover testified that she put a dresser across the door and ignored it. He finally went to the basement and stayed there. Ms. Grover testified that the next morning, she went down to the kitchen, and it was a disaster. There was food all over the place and she was not happy. She testified that she went to the basement to let the dogs out. The dogs were in his room, and he was still asleep. She testified that she knocked on the door and when she opened it, she saw that the fireplace was on. She testified that she told him that that was expensive and then he charged at her.

[151] Ms. Grover testified that he grabbed her and tried to smash her head against the wall. She testified that she escaped from that and tried to run upstairs to where her cell phone was. She ran into her bedroom and into the bathroom to try to shut the door. She testified that he got his foot in the door and grabbed her by the throat, choking her. Ms. Grover testified that she lost consciousness and fell on the floor. Ms. Grover testified that Mr. Rizzuto was kicking her and saying horrible things but eventually he left, and she phoned the police.

[152] Mr. Rizzuto agrees that they had a disagreement but denies the violent altercation described by Ms. Grover. His evidence about the argument was lacking in detail except that he acknowledges that he was loud and angry.

[153] Ms. Grover testified that by the time the police arrived, Mr. Rizzuto had left. Mr. Rizzuto agrees that he left and did not come back, though he says he planned to return eventually. He testified that his plan was to go to Vancouver Island to collect outstanding money owed to him by Farmer Construction.

[154] Three days later, the police advised Ms. Grover that they had arrested Mr. Rizzuto at the Motorhome on Vancouver Island.

[155] Because of a separate interaction between Mr. Rizzuto and a third-party related to Farmer Construction on Vancouver Island, Mr. Rizzuto was charged as follows:

Count 1, on or about November 17, 2017, at or near Fernie BC, did commit an offence of assault, contrary to section 266 Criminal Code.

Count 2, on or about November 17, 2017, at or near Fernie BC, did commit an offence of Uttering threats, contrary to section 264.1(1) Criminal Code.

Count 1, on or about November 17, 2017, at or near Fernie BC, did commit an offence of Uttering threats, contrary to section 264.1 (1) Criminal Code.

Count 2, on or about November 19, 2017, at or near Central Saanich BC, did commit an offence of Uttering threats, contrary to section 264.1 (1) Criminal Code.

[156] While Mr. Rizzuto was eventually acquitted and the Crown then stayed the charges, for the purposes of this case what is significant is that for a significant period, Mr. Rizzuto was placed on restrictive bail conditions including:

- a) You must have no contact or communication, directly or indirectly, with Susan Grover except through your lawyer for the limited purpose of resolving any division of asset [sic] family matters.
- b) You must not go to or be within 50 meters of the residence of Susan Grover located at both 8 Blackrock Place and 20 Cedar Bowl Crescent in Fernie, British Columbia, unless you are in the presence of a peace officer for the limited purpose of removing your personal effects otherwise you are to, at no time, be in the community of Fernie, British Columbia, except for attending court in Fernie on your outstanding criminal charges.

- [157] At the time these conditions were imposed, the project at 8 Black Rock was not yet completed although most of the work had been done.
- [158] Mr. Rizzuto argued that Ms. Grover took control of RCL's records and removed evidence that would verify his dealings with her and her Numbered Company.
- [159] I do not accept this argument for the following reasons.
- [160] First, Ms. Grover testified that she provided every document in the office to Mr. Rizzuto's accountant's office. About a month after she gave the accountant the first load, she was cleaning out a storage room in the house and came across other files and immediately sent those over by priority post. Ms. Grover denied that she retained or destroyed any paperwork pertaining to Mr. Rizzuto or RCL.
- [161] Ms. Grover testified that she had a computer in her office that had some information pertaining to RCL on it but that it also had some of her personal information on it. She wanted to remove her personal information from that computer before it was sent to Mr. Rizzuto. In the end, it went to Mr. Rizzuto.
- [162] Nevertheless, Mr. Rizzuto did not have all his documentation.
- [163] Mr. Rizzuto hired Ms. Sherri Martinson in or around May 2019, to prepare RCL's outstanding returns for the period 2017 to 2019 and to liaise with the CRA on various tax objections to the audit assessments for RCL and Mr. Rizzuto's personal account.
- [164] At that time, Ms. Martinson noted that there was various documentation missing. In a letter dated May 21, 2019, and sent to Mr. Rizzuto's former accountant, she described the missing documents as follows:

The bank statements, deposit books and cheque stubs are not in the boxes. Also, although all of the revenue and expense documentation for 1 Black Rock Place is enclosed, there are no files for 8 Black Rock Place. In some instances, there are invoices and payments posted but no record of the deposit in the bank for a numbered company named 1110219 BC Ltd.

Could you please provide any of the documentation above that you may still have or explanations for any of the anomalies. Your assistance would be greatly appreciated.

- [165] Ms. Martinson also made contact with Ms. Grover's then counsel in this proceeding, Ms. Gerbig, seeking the missing documentation. On May 31, 2019, Ms. Gerbig responded, in part:

I do have some records with respect to the construction of the Black Rock property. Mr. Rizzuto's family law lawyer has had a list of those records since August 2018 and has not yet bothered to request any of them.

I will make the originals available and retain copies of what I have. The originals will likely be available next week sometime. I'll let you know. They will be at my office in New Westminster.

Ms. Grover has no other records personally.

[166] Ms. Martinson emailed Mr. Rizzuto the same day indicating that she would arrange for pick up of these documents the following week.

[167] Ms. Martinson testified that she sent a courier to pick up the documents. Ms. Martinson testified that she received 21 boxes of files relating to RCL.

[168] On August 16, 2019, Ms. Martinson emailed Mr. Rizzuto as follows:

Below find the anomalies found to date within the bookkeeping process:

- 1) All files for 1 [sic] Black Rock were missing. Was eventually able to retrieve them from Ms. Grover's lawyer. Had to pay to have them picked up. The absence of these files prevented a timely filing of the income tax for Rizzuto Construction Ltd. (RCL). On the front of the Black Rock, received from the lawyer, was a hand written note stating that RCL was out of business/bankrupt.
- 3) Billing for 1110219 BC Ltd. became irregular; billings were consistently done every two weeks from April 2017 to October 5, 2017. The invoices for Sep 25 and Oct 5 were \$28,422 and \$30,164 respectively. There was no billing until Nov 11, 2017 and it was \$10,476 yet you explained that there was work being done all through the rest of Oct and first part of Nov.
- 4) There was a payment posted in the Sage bookkeeping to pay the last invoice of \$10, 476 but no cheque was ever received or deposited.
- 5) Payroll deductions were calculated and and [sic] posted as paid (by e-transfer) for the month of October yet they were never paid. When the T4's were done by the accountant, RCL was short on remittances due to October not being paid and a smaller amount for November pay cheques issued. The shortage was in excess of \$7,000.
- 6) There are many documents for the 1 [sic] Black Rock property in various names. There are documents for various permits, licences, vendors, services, etc. in the names of RCL, Garth Rizzuto and also the 1110219 BC Ltd. corporation.

[Emphasis added.]

[169] In handwriting, on the exhibit filed in court, items 1 and 6 were corrected to read 8 Black Rock.

[170] What I take from this communication is that Mr. Rizzuto had access to the documents relating to 8 Black Rock from Ms. Grover's lawyer since at least August 2018 but did not request them. Ms. Martinson obtained them in August 2019.

- [171] Ms. Martinson testified that even after receiving those documents there were many records missing. However, she did not make a list of those missing records. Ms. Martinson testified that because she had done forensic accounting, she was able to go into the books and put them together the best she could to get them caught up. I can place little significance to the fact of missing documents when I have no evidence of what documents are missing and no basis to conclude that Ms. Grover was responsible for the fact that they are missing.
- [172] Ms. Martinson's e-mail refers to a handwritten note on one of the boxes stating that RCL was "out of business/bankrupt." Mr. Rizzuto argues that Ms. Grover falsely advanced these claims and caused him substantial financial loss. However, Ms. Martinson testified that she did not know when this note was written or by whom. She could not say whether it was written by Ms. Grover. I am unable to find this note was made by Ms. Grover. Ms. Martinson testified, and I accept, that RCL had not been bankrupt in this period. It is clear, nevertheless, that RCL was facing significant financial difficulties as I have outlined above.
- [173] With respect to item 3 in Ms. Martinson's August 2019 email, Ms. Martinson testified that she observed regular two-week invoicing starting in April 2017 from RCL to a numbered company for work they were doing at 8 Black Rock. Ms. Martinson testified that the invoicing was odd. In some instances, invoices were prepared prior to work being done and paid immediately after the work was done. Ms. Martinson testified that this is not a normal way to do business. Ms. Martinson testified that in October or November 2017, the billing became a bit erratic, and it was quite different after that.
- [174] Mr. Rizzuto argues that Ms. Grover was responsible for any billing irregularities because of the work she was doing for RCL. However, the evidence is clear that Mr. Rizzuto had final oversight over all invoicing.
- [175] It is not surprising that the billing became erratic in or around October 2017 as that is the time-period during which various RCL cheques were being returned with insufficient funds and Ms. Grover began paying subcontractors directly. That also explains why the November 2017 cheque for \$10, 476 was posted in the Sage Bookkeeping but not deposited to RCL's account.

Resulting Trust

- [176] As both parties testified, Ms. Grover purchased 8 Black Rock using her own funds without financial contribution from Mr. Rizzuto.
- [177] Although Mr. Rizzuto worked on building the residence on 8 Black Rock, this was not gratuitous. It was in exchange for over a year of free, full-time work from Ms. Grover at RCL.
- [178] There was no demand for the payment of a management fee from Mr. Rizzuto until over a year after separation and the commencement of this litigation. This late arising invoice for a management fee is not a credible, legitimate demand for payment.

[179] I have not been persuaded that other invoices remain outstanding. Ms. Martinson attempted to recreate books after the fact and relied in large part on Mr. Rizzuto's explanation of what was occurring in the relevant period. His explanation was not reliable which makes her assumptions unreliable. Mr. Rizzuto was unaware, apparently, that Ms. Grover was paying workers directly. The documentary evidence satisfies me that is what occurred.

[180] There being no gratuitous transfer, Mr. Rizzuto's claim for a resulting trust is therefore dismissed.

Breach of Contract/ Quantum Meruit/ Unjust Enrichment

[181] For substantially similar reasons, Mr. Rizzuto's claims in breach of contract, quantum meruit, and unjust enrichment must fail.

[182] While Ms. Grover benefited from Mr. Rizzuto's work in respect of the 8 Black Rock project, this work was undertaken pursuant to an agreement that they both benefited from. Ms. Grover was paying for labour and materials, she was not paying for Mr. Rizzuto's labour, and she was not paying a mark up or management fee. This agreement is reflected in the contemporaneous invoicing that occurred.

[183] This was a benefit to Ms. Grover, but it was offset by the year and a half of free labour she had provided to RCL. Neither Ms. Grover's labour nor Mr. Rizzuto's can be quantified on the record before me. Neither kept time sheets of their hours. Nor do I have evidence of an amount they would charge for hours. As between these parties, a consensus was reached that they would exchange their labour in this manner.

[184] The agreement is the "juristic" reason for the benefit.

[185] Ms. Grover also did not get what she bargained for. Mr. Rizzuto offered to build the residence for \$250,000. In the end, it cost her substantially more than that. The residence was not complete when Mr. Rizzuto elected to leave.

[186] Ms. Grover testified that two of the labourers who had been working on 8 Black Rock agreed to stay and finish the project to lockup condition which meant that doors and windows had to be installed. There was also a lot of work to do on the siding outside of the house.

[187] Mr. Rizzuto has no direct knowledge of what occurred after he left, and I accept Ms. Grover's explanation of this which I set out below.

[188] On November 27, 2017, Ms. Grover signed a completion certificate that listed no defects. Ms. Grover testified that a representative for Pacific Home Warranty met with her and explained what she had to do. He advised her to sign the completion certificate as the homeowner which is what she did. She was also the homeowner representative, because RCL was no longer there.

- [189] Although the form indicates there were no deficiencies, Ms. Grover testified and I accept, that there were a lot of deficiencies. For example, the wrong foam was used to insulate the crawl space and that had to be entirely removed and reinstalled. The walls were not straight. A window in the garage was not installed correctly and the walls were not insulated or finished in any way.
- [190] Ms. Grover testified that there were also many deficiencies that were covered by snow such as pipes outside and the deck. Many things were not evident until the snow melted.
- [191] Finally, the completion certificate pertains to the outside of the house and there was a lot of work remaining to be done on the inside. For example, door handles had to be installed on all interior doors. Walls were spray painted before they were dusted so she had to strip all the paint on the inside of the house, sand the walls, vacuum, and then paint. The floors were also damaged because the semi-hardwood laminate was installed before the mudding and sanding was done. She had to get on her hands and knees with a toothbrush to clean the floor. Ms. Grover had to pay to complete and repair all this work.
- [192] Ms. Grover testified that the worksite at 8 Black Rock was also left in disarray. She testified that there was lumber all over the yard, tools and ladders and equipment scattered all around the job site. Ms. Grover testified that her neighbours got together and cleaned up the job site. She testified that they put all the tools in Mr. Rizzuto's trailer.
- [193] Ms. Grover testified that in the end she paid approximately \$480,000 in total for the purchase of the property and the work that was done. This amount is over \$100,000 more than Mr. Rizzuto estimated. Ms. Grover testified that she sold the property in June 2019 for approximately \$700,000. She testified that after the sale of the 8 Black Rock, she dissolved the Numbered Company.
- [194] The late arising invoice for a 10% management fee was not agreed to. There is no breach in not paying it.
- [195] As for the claim in quantum meruit, this generally arises in three situations, none of which are applicable here:
- a) where there is a contract but the price is not fixed;
 - b) where there is an express agreement to pay a reasonable sum and the sum needs to be determined;
 - c) where there is no contract but the court implies a contract based on the facts. For example, work occurs during the course of negotiations which then fail.

Pemberton Homes at para. 67.

- [196] In this case, there was a contract. The agreement was express as to what would be paid. Mr. Rizzuto's labour was not to be paid for and that occurred for reasons already explained.

[197] The claimant's claims for damages for breach of contract, quantum meruit, and unjust enrichment are dismissed.

The Motorhome

[198] Mr. Rizzuto testified that the funds to purchase the Motorhome came from two previously owned assets. I will therefore describe those assets first before discussing the purchase of the Motorhome.

1532 Property

[199] Shortly after she moved to Fernie, Ms. Grover purchased the 1532 Property paying \$290,000. Mr. Rizzuto did not contribute any money towards the purchase.

[200] Mr. Rizzuto contends that he made improvements to the 1532 Property.

[201] I do not find this evidence to be credible for the following reasons:

- a) After the purchase but before the conveyance had closed, the First Charge occurred. Thereafter, Ms. Grover and her daughter-in-law moved into the 1532 Property in March 2016.
- b) The terms of Mr. Rizzuto's bail conditions did not allow him to be in the vicinity of Ms. Grover's daughter-in-law who resided at the 1532 Property until August 2016.
- c) On September 25, 2016, Mr. Rizzuto sent an e-mail to Ms. Grover in which he offered an estimate for work that he proposed to do on the 1532 Property. The invoices that Mr. Rizzuto supplied to support this work were dated July 2016. As noted, he was not permitted to be at the property at that time and Mr. Rizzuto acknowledged under cross-examination that the invoices might be for different jobs. He testified that he never billed Ms. Grover for the work he performed because that was part of the arrangement that they had, and because the work related to the Motorhome. I find this testimony implausible given that he provided her with an estimate which suggests a desire to be paid. I also do not accept that the parties were discussing the purchase of a larger motorhome at this point, an issue I will return to below.
- d) Ms. Grover testified, and I accept, that she rejected his proposal to do work.
- e) After Ms. Grover's daughter-in-law moved out of the 1532 Property, tenants moved in. The 1532 Property was professionally managed. Ms. Grover testified, and I accept, that none of the daughter-in-law, the tenants, nor the property manager informed her of any work being performed at the 1532 Property.
- f) She also testified, and I accept, that Mr. Rizzuto never advised her that he was doing any work on the 1532 Property.
- g) She testified that she wanted as little work done as possible on the 1532 Property. She testified and I accept that she used a company, JK Mechanical Services, to do any minor work necessary on the property.

[202] In June 2017, Ms. Grover sold the 1532 Property for a sale price of \$380,000. Mr. Rizzuto acknowledged this was Ms. Grover's money.

Small Motorhome

[203] In 2016, Ms. Grover purchased a small motorhome. She paid for this motorhome without contribution from Mr. Rizzuto.

Purchase of the Motorhome

[204] It was not until 2017 that Ms. Grover was arranging to spend winters in a warmer climate. This timeline which I have accepted is inconsistent with Mr. Rizzuto's contention that he and Ms. Grover planned this purchase as far back as the Fall of 2016. Ms. Grover decided to purchase a larger motorhome to park in Arizona. To this end, in or around May 2017, she traded in her smaller motorhome and bought the 2008 Itasca Sunrise 32H Motorhome from Triangle RV Centre in Saanich on Vancouver Island.

[205] At the time of the purchase, Ms. Grover's mother was very ill. It was therefore expected that Mr. Rizzuto would have to drive the Motorhome by himself to Arizona. Ms. Grover testified that on the advice of the salesperson to avoid problems at the border, she registered the Motorhome into their joint names. Whether the advice was right or wrong is of no moment. What is important is that Ms. Grover relied upon it. She testified, and I accept, that she did not intend to gift any portion of the Motorhome to Mr. Rizzuto.

[206] The cost of the Motorhome was \$82,000. Ms. Grover testified that in order to obtain the Motorhome, she traded in the small motorhome and paid approximately \$63,350 from the net sale proceeds of the 1532 Property.

[207] Mr. Rizzuto made no financial contribution towards the purchase price of the Motorhome. Nor, as I have set out above, did he have any claim to an interest in the properties from which those funds came.

[208] Ms. Grover argues a resulting trust arises to her benefit because she gratuitously placed the Motorhome into their joint names. She was acting as a purchaser herself, not putting up the money as a loan to Mr. Rizzuto. Mr. Rizzuto gave no value for any interest in the Motorhome and was therefore under an obligation to return it to her.

[209] Mr. Rizzuto's evidence was somewhat inconsistent about what he believed had occurred with respect to the purchase of the Motorhome. He testified that he did not know whether Ms. Grover was "rewarding" him when she transferred the Motorhome into their joint names. In contrast, he also testified that they had an oral contract about the Motorhome in relation to work he says he did at the 1532 Property. I have already found, above, that Mr. Rizzuto did no such work and there was no such agreement.

[210] The only other contribution Mr. Rizzuto claims he made to the Motorhome was the purchase of a tow-package. While Ms. Grover acknowledges that Mr. Rizzuto purchased the tow-package, she testified that she did not sell it. Neither Mr. Rizzuto nor Ms. Grover saw the tow-package on the Motorhome when they attended at the Motorhome on Vancouver Island in November 2017. In these circumstances, I am not satisfied on a balance of probabilities that the tow-package was attached to the Motorhome when it was sold. I do not find that Ms. Grover benefited from it when she sold the Motorhome in March 2018 for approximately \$54,000.

[211] In any event, Mr. Rizzuto's evidence falls far short of rebutting the presumption of a resulting trust which arises on these facts, with respect to the gratuitous transfer of the Motorhome into the parties' joint names. I find that any interest Mr. Rizzuto held was held as a resulting trust for Ms. Grover. I dismiss Mr. Rizzuto's claim to an interest in the Motorhome.

Whether Mr. Rizzuto is entitled to be compensated for various possessions

[212] Mr. Rizzuto argues that he should be compensated for the loss of various items that were either left behind at the various properties or left in the Motorhome.

Items at the Motorhome

[213] Mr. Rizzuto argues that various items were left in the Motorhome that were eventually sold for example:

- a) his fender guitar;
- b) his passport; and
- c) his laptop computer.

[214] Mr. Rizzuto testified that when he arrived at the Motorhome on Vancouver Island in November 2017, he did not have keys to it. He testified that it was open.

[215] Ms. Grover testified that the last time she left the Motorhome, she had left it locked. She testified that there were two sets of keys for the Motorhome, and she had both.

[216] Mr. Rizzuto did not explain how he intended to access the Motorhome if he had not found it open. He gave no evidence that his guitar was in the Motorhome when he arrived.

[217] When he was arrested and removed from the Motorhome a few days later, it was left open because, again, Mr. Rizzuto had no keys.

[218] Ms. Grover testified that the police informed her that Mr. Rizzuto had been arrested in the Motorhome and that the owners of the property where the Motorhome was parked wanted it gone from the property, as the arrest had been a disturbance for other residents. She travelled to move the Motorhome.

- [219] She testified that she parked her car and got out and went to the door of the Motorhome, which was not only unlocked, but ajar. She testified that inside, the place was a mess. There were papers and things belonging to Mr. Rizzuto on the table. She did not see a guitar in the Motorhome.
- [220] Ms. Grover testified that the RCMP searched Mr. Rizzuto's truck and the Motorhome with police dogs. After that was complete, she moved the Motorhome to a different property and eventually sold it.
- [221] It is impossible to ascertain, based on the record before me, who unlocked the Motorhome or when, or what items were in it at that time. It could be that someone broke into the Motorhome before Mr. Rizzuto arrived and removed whatever items were there. It could be that someone came after his arrest, found it open, and took whatever items were found there.
- [222] It was beyond Ms. Grover's control to protect the contents of the Motorhome in these circumstances. She cannot be held responsible for the loss of items left within it.
- [223] Mr. Rizzuto's claim for compensation for the loss of such items is dismissed.

Items at the other properties

- [224] Mr. Rizzuto argues that the following items were left in or at the various other properties:
- a) all furniture at 20 Cedar Bowl;
 - b) snow skis in storage on a ski rack at 20 Cedar Bowl; and
 - c) various tools left at the Cedar Bowl Properties and 8 Black Rock.
- [225] Again, he seeks to be compensated from Ms. Grover.
- [226] I cannot accept this argument for several reasons.
- [227] First, the contract of purchase and sale with respect to 20 Cedar Bowl contemplated that the seller would provide a detailed and itemized list of items that were excluded from the sale. Ms. Grover testified that Ms. Edwards gave her such a list of items that she wanted from the house at the time of the sale. Ms. Grover testified that Ms. Edwards indicated that anything else in 20 Cedar Bowl was included with the sale of the house.
- [228] Although Mr. Rizzuto was not a party to the contract of purchase and sale in respect of 20 Cedar Bowl, he was aware of the sale and he himself took steps to remove charges from title. If he was concerned about excluding furniture from the sale, he could and should have raised the issue with Ms. Edwards or Ms. Grover. I do not find he took any such steps.
- [229] Second, with respect to tools, skis, and other effects left behind, Mr. Rizzuto had multiple opportunities to collect his effects.

[230] Ms. Grover's counsel wrote to Mr. Rizzuto's counsel in January 2018 and at that time indicated, among other things that:

- a) Ms. Grover had been expecting to hear from Mr. Rizzuto's counsel and the local RCMP detachment with respect to specific arrangements for Mr. Rizzuto to remove his items.
- b) Ms. Grover took no responsibility for the safekeeping of any items that Mr. Rizzuto left at 8 Black Rock or elsewhere.
- c) Ms. Grover agreed to one attendance, by an agreed independent third-party moving service engaged by Mr. Rizzuto, to have all the agreed items removed from the various properties by January 31, 2018.

[231] That did not occur.

[232] Instead, Ms. Grover retained Mr. Cameron to remove Mr. Rizzuto's items from both the Cedar Bowl Properties and 8 Black Rock.

[233] Mr. Cameron was a straightforward witness who was disinterested in the outcome of this proceeding and who had no ill-will towards Mr. Rizzuto. Indeed, he testified that he knew Mr. Rizzuto from working together in Fernie and that he had a good experience with him. I accept his detailed evidence in its entirety.

[234] Mr. Rizzuto rented porta potties from Mr. Cameron's company from May 2015 until November 2017. Mr. Cameron testified that Mr. Rizzuto had a good track record of paying his invoices up until 2017 when he stopped paying.

[235] Mr. Cameron testified that he met Ms. Grover in December 2017 when she called about a porta potty sitting at 8 Black Rock. Mr. Cameron testified that Ms. Grover met with him and he was able to pick up the porta potty and take it away.

[236] Mr. Cameron testified that when he met with Ms. Grover, she explained her circumstances to him and he told her that if she ever needed help, she could call.

[237] Mr. Cameron testified that Ms. Grover called him a second time in January 2018 to ask for his assistance. Mr. Cameron was out of the country, so he followed up when he returned in February 2018.

[238] Mr. Cameron testified that in February 2018, he went to help her move stuff out of 20 Cedar Bowl and get 8 Black Rock cleaned up.

[239] Mr. Cameron testified that at 20 Cedar Bowl, Ms. Grover had a lot of Mr. Rizzuto's personal clothing boxed up already. Mr. Cameron testified that there was a Mercedes outside of the door to the left of the garage. It was buried in a snowbank and Ms. Grover had already packed it full of Mr. Rizzuto's clothing, shoes, and golf bags. Mr. Cameron testified that they dug it out of the snow. He testified that he did not want to try to start the car without having it checked over. His mechanics came and checked the car to make sure the oils were up and that there were no other problems. Mr. Cameron testified that Mr. Rizzuto wanted the car

taken out on the first pull. They filled it full of fuel and drove it to Cranbrook.

- [240] Mr. Cameron testified that there was also a low sided trailer at 20 Cedar Bowl that they had to dig out of the snow. He testified that they had to move snow from in front of the house. Mr. Cameron testified that they used the trailer to load up any left-over products, including rebar and two-by-fours and anything else of value.
- [241] Mr. Cameron testified that inside the house at 20 Cedar Bowl there was a musical room. In the musical room there were a lot of instruments. Some of the instruments were in travelling boxes and others sitting on guitar racks. Mr. Cameron testified that he could tell the instruments were very high end, so he packed them up himself. There was a set of drums that Mr. Rizzuto instructed Mr. Cameron to give to a gentleman who played in his band. Mr. Cameron did so. Mr. Cameron testified that there were also music racks, electric cords, and an amplifier that were all packed up as well. Mr. Cameron testified that he took all the instruments to his compound and kept them inside in a heated facility so they would not be affected by the cold.
- [242] Mr. Cameron testified that inside the house at 20 Cedar Bowl there was also memorabilia and he and his team packed that up, including Mr. Rizzuto's jersey in a shadow box. Although Mr. Rizzuto said someone spit on his jersey shadow box, Mr. Cameron testified, and I accept, that there was no spit on the shadow box.
- [243] Mr. Cameron testified that all the boxes were packed into a cube van while they went to get his cargo trailer.
- [244] Mr. Cameron testified that they went into the garage and packed up all the tools that were found on shelves. These included nail guns, hammers, air compressors, hand tools, saws, hand saws, wrenches, screw drivers and the like. Mr. Cameron testified that everything that resembled a tool was loaded into the cube van so they could take it out to the compound and put it into Mr. Rizzuto's covered trailer once they dug it out of the snow.
- [245] Ms. Grover gave evidence, which I accept, that all of Mr. Rizzuto's employees had the access code to the garage so that they could get whatever tools they needed.
- [246] An enclosed trailer was picked up at 8 Black Rock. They had to move snow to get the trailer out. Mr. Cameron testified that the doors on the trailer were unlocked and open.
- [247] Mr. Cameron testified that Mr. Rizzuto had advised him that he was looking for special scaffolding but there was none around the house. Mr. Cameron testified that he went back to check again after the snow melted but found nothing.
- [248] Mr. Cameron testified that when he was at 8 Black Rock, he knew the materials at the site belonged to Mr. Rizzuto. Mr. Cameron testified that there were tools everywhere inside the house and he and his team packed them all up into five-gallon buckets. Mr. Cameron testified that they packed them up into the trailer and pulled the trailer to the compound.

- [249] Mr. Cameron testified that he loaded the trailer with heavy items on the bottom and lighter items on top.
- [250] Mr. Cameron testified that on February 10, 2018, they drove Mr. Rizzuto's Mercedes to Cranbrook, and he towed his white covered trailer full of tools with his pickup. Mr. Rizzuto came to get the trailer, but he did not have a trailer hitch. Mr. Cameron testified that he lent him his own trailer hitch so they could get on their way.
- [251] Mr. Cameron testified that they still had a second trailer, a little flat deck with sides on it that they had finished loading with some big bulky stuff that was robust enough to stand up to the outside elements. On May 5, 2018, Mr. Cameron testified that one of his team members delivered it to highway 393 which is where Mr. Rizzuto asked to have it delivered. Although Mr. Rizzuto set up the meeting time, he was not there when they arrived. They dropped the trailer off, and Mr. Cameron testified that Mr. Rizzuto later confirmed that he had picked it up and made it to Vancouver.
- [252] Mr. Cameron testified that although his detailed invoices were sent to both the e-mail and mailing address he had for Mr. Rizzuto, the invoices were never paid, and the trailer hitch was not returned.
- [253] What this evidence demonstrates is that Mr. Rizzuto recklessly abandoned many of his effects when he went to Vancouver Island. Despite this, Mr. Cameron, his employees and Ms. Grover made best efforts to retrieve all his items and handled them with care in returning them to Mr. Rizzuto.
- [254] It was beyond anyone's control to protect items left outside the various properties in these circumstances or within the garage in circumstances where so many people had the access code. Those items that were retrieved were treated with care. I reject Mr. Rizzuto's evidence that any of his items were treated with disrespect or carelessness by Mr. Cameron, his employees, or Ms. Grover. Ms. Grover is not responsible for any loss Ms. Rizzuto may have suffered from the abandonment of his items.
- [255] Mr. Rizzuto's claim for compensation for the loss of such items is dismissed.

Costs

- [256] As Ms. Grover has been successful, she is presumptively entitled to her costs at Scale B. If either party wishes to submit otherwise, they are directed to set a short appearance before me with Supreme Court Scheduling within 30 days to determine a schedule for the exchange of written submissions.

"Latimer J."

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