

CANADA / JUDGMENT

Samra v. Lalli

2025 BCSC 1030

COURT

Supreme Court of British Columbia

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2025 BCSC 1030 Samra v. Lalli

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Samra v. Lalli,

2025 BCSC 1030

Date: 20250605

Docket: E56497

Registry: New Westminster

Between:

Belsher Singh Samra

Claimant

And

Joanne Parmjit Kaur Lalli

Respondent

And

Belsher Singh Samra, Mohinder Kaur Padda and Jagdish Singh Padda

Respondents by Counterclaim

Before: The Honourable Justice Hamilton

Reasons for Judgment

Counsel for the Claimant:

P.S. Virk

Counsel for the Respondent:

B.S. Sandhu

Counsel for the Respondents by Counterclaim:

C.K. Sabharwal

Place and Dates of Trial:

Abbotsford, B.C.

July 22-26, 29-31, August 1-2 and December 6, 2024

Place and Date of Judgment:

New Westminster, B.C.

June 5, 2025

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Introduction

- [1] This is a family law case. The claimant Belsher Singh Samra ("Belsher") and the respondent Joanne Parmjit Kaur Lalli ("Joanne") were married in June 2004 and separated in 2018 after almost 14 years. Belsher sought a divorce which Joanne opposed but which was granted in November 2020. Belsher and Joanne are currently in their late 40's, both employed full time and currently earn \$65,000 and \$48,000 respectively. There are no children of the marriage.
- [2] Joanne seeks property division pursuant to the Family Law Act, S.B.C. 2011, c. 25 [FLA] and spousal support against Belsher. She also makes claims against Belsher's sister and brother-in-law, Mohinder Kaur Padda ("Mandy") and Jagdish Singh Padda ("Jagdish") regarding property located at 80A Avenue, Surrey, British Columbia where she and Belsher live (the "Property"). Belsher was on title to the Property with his father from 2011 to August of 2014. The Property has been registered to Mandy and Jagdish since 2014/2015. Joanne amended her pleadings on the eve of trial to include a claim that the transfer of the Property from Belsher back to his father in August 2014 was void as a fraudulent conveyance. She maintains that Belsher owned an interest in the Property at the date of separation and that it is family property pursuant to the FLA.
- [3] The Property was originally owned by Belsher's mother Jaspal Kaur Samra ("Jaspal") and father Gurdev Singh Samra ("Gurdev") as joint tenants. Jaspal and Gurdev purchased the Property as their home prior to Belsher and Joanne's relationship. The Property has a three-bedroom upstairs suite where Belsher's parents resided as well as two rental suites downstairs, a one and a two bedroom. Belsher did not contribute financially to the purchase of the Property. However, when Belsher and Joanne were married, they moved into the one-bedroom downstairs suite. Joanne maintains that she and Belsher paid his parents rent. Belsher denies they paid his parents rent but admits they contributed to utilities. I will address this in more detail below.
- [4] Jaspal had Parkinson's disease and passed away in January 2008, approximately three and a half years after Belsher and Joanne's wedding. Joanne claims that she helped provide care for Jaspal. The Property passed to Gurdev's sole name as the surviving spouse. After Jaspal passed away, Belsher and Joanne moved upstairs and lived with Gurdev. Joanne claims that she helped provide care for Gurdev during this period. The basement suites were rented to third parties.
- [5] Belsher testified that in 2011, his father told him that he wanted to give him a chance to demonstrate that he could be financially responsible. Belsher testified that Gurdev told him that he would add Belsher's name to the title to the Property and if Belsher demonstrated financial responsibility by paying all the expenses for the Property including the mortgage (any portion not covered by the rental suite income), utilities and property taxes, Gurdev would consider granting Belsher an ownership interest in the Property. Gurdev then

transferred a one-half legal interest in the Property to Belsher for \$1.

- [6] Belsher testified that he and Joanne failed to pay the expenses for the Property. In fact, unbeknownst to Gurdev, by 2014, Belsher had not paid the property taxes for three years. In June of 2014, Belsher received a notice from the City of Surrey that the Property would be sold unless all arrears were paid immediately. Belsher and Joanne did not have funds to pay the arrears. Belsher's evidence was that he and Joanne lived beyond their means and did not have any savings. Belsher testified that when he got the letter from the City of Surrey, he discussed it with Joanne and they reached out to Mandy and Jagdish to pay the outstanding taxes and avoid the forced sale of the Property. Joanne testified that she had no knowledge of the outstanding taxes.
- [7] Belsher, Mandy and Jagdish all testified that they, including Joanne, met on August 24, 2014, to discuss the tax arrears owing and that at that meeting in Joanne's presence Belsher asked Mandy and Jagdish to bail them out and pay the taxes. Joanne testified that she was never involved in any conversations with Belsher and/or Mandy or Jagdish regarding unpaid property taxes and she vehemently denied being at the meeting. The next day, August 25, 2014, Mandy and Jagdish paid the outstanding property taxes for the Property of \$14,862.96.
- [8] Belsher testified that when he informed his father about the tax arrears, Gurdev was extremely upset and demanded that Belsher immediately transfer the Property back to Gurdev's sole name. On August 29, 2014, Belsher signed a Form A transfer to transfer his interest in the Property back to his father. Belsher's evidence is that Joanne was fully aware of the transfer and that she was in fact with Belsher when he attended his lawyer's office to sign the transfer and when he dropped off the Form A transfer paper to his father's lawyers. Joanne denied driving to either lawyer's offices with Belsher and maintains that she was completely unaware until after she commenced these proceedings that Belsher had transferred his interest in the Property back to his father. She testified that she and Belsher were having marital difficulties when Belsher signed the transfer and that he did so to defeat her claims to the Property.
- [9] On August 31, 2014, after Belsher signed the Form A transfer papers, Gurdev signed a Form A transfer to transfer one half of the Property to his daughter Mandy. Concurrently, Gurdev signed a deed of gift in Mandy's favour. The transfer from Belsher to Gurdev and the transfer from Gurdev to Mandy were registered on September 11, 2014. Each of Belsher, Gurdev and Mandy signed in front of different lawyers. Belsher testified that he was unaware of his father's transfer of the Property to Mandy at that time. Belsher's evidence is that he had no input in his father's decision. Mandy and Jagdish took over paying the expenses including the mortgage and property taxes for the Property since September 2014.
- [10] Mandy's husband, Jagdish, was added to the title in or about April 2015. They refinanced the mortgage to pay out Gurdev's personal debts. Jagdish was required to be added to the mortgage and title to secure the mortgage. Gurdev passed away in May 2015 and Mandy and Jagdish became the sole registered owners of the Property by way of survivorship.

- [11] In or about the fall of 2015, Belsher and Mandy's estranged brother "Lucky" threatened with litigation regarding the Property and Gurdev's estate. Mandy was Gurdev's executrix. She testified that she wanted to settle with Lucky and offer him something even though the Property did not pass to Gurdev's estate and the estate did not own anything. Mandy hoped that by paying Lucky something, she might have a relationship with Lucky. On Joanne's recommendation, Mandy retained Satpal Rai, a financial advisor, to assist in settling the matter. Joanne worked for Ms. Rai part time at that time. Ms. Rai had also been married to Belsher and Mandy's cousin but was divorced. Ms. Rai also briefly gave Belsher and Joanne financial planning advice in 2013/2014 but did not bring that file with her to court when she testified.
- [12] Mandy consulted Ms. Rai for advice and later formally retained her. Ms. Rai hosted meetings with the family members at her office, prepared some calculations for an offer and helped mediate a settlement. Ultimately, Mandy and Jagdish paid Lucky approximately \$96,000 in exchange for any and all interest he may have to the Property or Gurdev's estate.
- [13] Joanne testified that even in 2015 and 2016, she was unaware that Belsher's name was not on title to the Property. Joanne also maintains that the calculations used to reach settlement with Lucky provide evidence of Belsher and Joanne's contributions to the Property and demonstrate that Belsher should have also received at least one third of the value of the Property as his share of Gurdev's Estate. Belsher maintains that the list of contributions is not accurate, was prepared for a different purpose and ought not to be relied on in this proceeding.
- [14] It is common ground that Belsher did not request any payment from Mandy regarding the Property or Gurdev's estate, nor did he commence any litigation seeking an interest in Gurdev's estate or the Property after his father died. It is also common ground that such claims would be out of time by the time Belsher and Joanne separated. Belsher and Joanne did however continue to reside in the larger upstairs suite after Gurdev passed away.
- [15] Belsher and Joanne lived together in the upstairs suite rent-free from 2011 until April 2018, when they separated.
- [16] In April 2018, when Belsher and Joanne separated, Belsher moved downstairs to the two-bedroom suite in the Property where he continues to reside. Joanne remains residing in the upstairs suite despite several requests by Mandy and Jagdish that she vacate the Property.
- [17] Mandy and Jagdish seek occupational rent from Belsher and Joanne. They tendered an expert report regarding the market value rent of the upstairs suite and for the two-bedroom suite. The expert was cross-examined. I accept the expert's evidence that the upstairs suite occupied by Joanne could have been rented for \$2,700 to \$2,900 per month and the two-bedroom downstairs suite occupied by Belsher could have been rented for \$1,950 to \$2,150 per month.

History of Proceedings

- [18] Belsher filed for divorce on November 21, 2018 by Notice of Family Claim, in which he states the separation date occurred on April 23, 2018. On November 30, 2018, Joanne filed a counterclaim stating the separation date as April 26, 2018. Joanne added Mandy and Jagdish to the proceeding as respondents by counterclaim as the registered owners of the Property. Joanne's initial claims against Mandy and Jagdish were based in unjust enrichment and constructive trust based on contributions she claims to have made to the Property and looking after Jaspal and Gurdev. Joanne also filed a certificate of pending litigation ("CPL") against the Property. Mandy and Jagdish filed a response to counterclaim on January 15, 2019.
- [19] In January 2019, Mandy and Jagdish commenced proceedings in the Residential Tenancy Branch to evict Joanne from the Property. However, those proceedings were stayed pending the outcome of this proceeding.
- [20] On August 13, 2020, Mandy and Jagdish filed a counterclaim seeking that Belsher and Joanne each pay them fair market value rent from 2015 onward. On November 25, 2020, Belsher and Joanne were divorced and Justice Blok ordered that Belsher and Joanne each pay rent to Mandy and Jagdish of \$500 per month on a without prejudice basis pending resolution of the proceeding.
- [21] At trial, they sought fair market value rent from Belsher and Joanne from March 1, 2019 to date, which is 76 months through June 1, 2025, less any amounts paid by Belsher and Joanne pursuant to Justice Blok's order. Mandy and Jagdish also claim damages against Joanne for improperly filing a CPL against the Property.
- [22] This is was the fifth trial date. The original trial was set to commence on July 26, 2021, but did not proceed due to Joanne claiming that she was too sick to proceed even by video.
- [23] The next trial was scheduled to commence January 17, 2022, but was adjourned due to court reasons which related to the Covid-19 pandemic. Another trial, which was scheduled to commence August 28, 2023, was adjourned because no judge was available to hear the matter.
- [24] The next trial date was to start on November 27, 2023. Joanne applied for and was granted an adjournment on condition that the next trial was pre-emptory on her. The matter then proceeded before me as scheduled, commencing July 22, 2024.
- [25] On July 12, 2024, Joanne amended her counterclaim to include a claim that the transfer of Belsher's one-half interest in the Property back to Gurdev in 2014 was a fraudulent conveyance and is void. As such, she maintains that the subsequent transfers are void. Joanne maintains that Belsher was the beneficial owner of the Property as at the parties' separation date and as such, she claims that the Property is family property and subject to division with her under the FLA. Belsher, Mandy and Jagdish oppose Joanne's claims. Additionally, they maintain that Joanne's claims for fraudulent conveyance were filed after

the expiry of the limitation period.

Credibility and Reliability

- [26] Credibility is a key issue in these proceedings. Belsher, Joanne, Mandy and Jagdish all testified and were cross-examined at length. Mandy and Jagdish produced their expert witness on fair market value rent for cross-examination. Joanne called her sister, Leanne Lalli, and a former employer, Satpal Rai, as witnesses.
- [27] I found Mandy and Jagdish to be credible and reliable. Their testimony was straightforward, detailed and consistently corroborated by documentation. Neither of them was defensive or evasive during cross-examination. Mandy and Jagdish each admitted when they could not recall details and appeared to appreciate the need to be detailed and accurate in presenting their evidence. They were balanced and reasonable, showing understandable annoyance towards both Belsher and Joanne for their behaviours, such as failing to pay the tax bills for the Property.
- [28] I also found Belsher's evidence to be credible and reliable. He appeared to be genuinely reliving his deep shame and embarrassment about letting his father down by not paying for the taxes and being poor with money. His memory was good for key events. Throughout, Belsher appeared as if he was trying his best to be accurate. I was not concerned that he was crafting his evidence to suit his case. He corrected himself when he made a mistake in his evidence. An example of this is that Belsher initially agreed in cross-examination that he and Joanne were having some marital difficulties during 2014, albeit not to the point of considering separation. The following day, when Belsher continued his testimony, he apologized and testified that he had gotten his years mixed up and it was actually 2009 or 2010, not 2014, when he and Joanne had the marital difficulties he had described. He explained that the previous day when he left court, he went to his kickboxing class, was thinking about his testimony and recalled that during the period of marriage difficulties Joanne had stayed overnight at his cousin's home. Belsher's cousin has a child and based on the age of his cousin's child at the time Joanne stayed overnight, Belsher realized it was several years earlier in 2009/2010 not 2014, when they had experienced any marital difficulties. Belsher was cross-examined on his correction and confirmed he had not spoken to anyone about changing his evidence. I accept Belsher's explanation and I find that it was 2009/2010, not 2014, when Belsher and Joanne experienced some marital discord.
- [29] By contrast, I found that Joanne's evidence was neither credible nor reliable. Joanne was argumentative and evasive during most of her cross-examination. She seemed to let her animosity towards Belsher and his family to affect her evidence. She often gave inordinately long-winded answers which were not responsive to the questions asked. She became angry with opposing counsel during cross-examination and repeatedly posed questions to counsel instead of answering their questions. I had to intervene repeatedly during her cross-examination to remind her to answer the questions and not ask opposing counsel questions. Joanne at times seemed to make up evidence as she went along. Her evidence was often

internally and externally inconsistent. Substantively, Joanne's testimony was often far-fetched, unreasonable, unlikely and inconsistent with documentation. An example of this was Joanne's testimony that she did not know that the Property had been transferred out of Belsher's name until after this litigation had started. She reluctantly admitted in cross-examination that her first counsel did a title search before starting this proceeding. Yet despite: (1) the pre-litigation title search; (2) the fact that she must have instructed her counsel to add Mandy and Jagdish as parties; and (3) she claimed a CPL against title to the Property, Joanne refused to admit that she was aware by November of 2018 that the Property was no longer in Belsher's name. Her evidence is not believable.

- [30] Overall, where they disagree, I much prefer Mandy and Jagdish's evidence over Joanne's evidence. I also prefer Belsher's evidence over Joanne's evidence where they disagree, except where otherwise noted.
- [31] Joanne called her sister, Leanne Lalli and her former employer/friend Ms. Rai as witnesses. Neither of these witnesses were helpful. Leanne Lalli testified that Joanne and Belsher were having marital problems in the summer of 2014. She also testified that Joanne provided significant help to Belsher's parents during their lives. However, much of Leanne Lalli's evidence was hearsay. I also formed the impression that Leanne Lalli: (1) was (perhaps unintentionally) crafting her evidence to help her sister rather than assist the court; and (2) had spoken about this proceeding with Joanne and they conferred regarding their evidence.
- [32] Ms. Rai was called to give evidence about several things including: (1) discussions that took place when she gave financial advice to Belsher and Joanne in 2013 or 2014; and (2) discussions that took place when she assisted Mandy as Gurdev's executrix to settle Lucky's claims to the Property and estate. I formed the impression that Ms. Rai feels sorry for Joanne and is advocating for her rather than providing objective evidence. As with Leanne Lalli, I had the impression Ms. Rai conferred with Joanne in advance regarding their evidence. I also found that Ms. Rai had a spotty memory for what occurred in 2013, 2014 or 2015. She did not bring her file regarding being a financial advisor to Joanne and Belsher. Yet she testified that she thought the Property was owned by Belsher and Joanne when she was their advisor in 2013 and 2014. She could not explain why she did not do a search on the title to the Property for either file. She did not explain why, if she thought Belsher and Joanne owned the Property in 2015, Mandy was the one to retain her (as opposed to Belsher and Joanne) for the discussions with Lucky regarding the Property. Ms. Rai was also at times confused and had not appeared to have reviewed her file before testifying. Ms. Rai probably had many client files. She did not seem to have complete and/or organized notes in her file. I found her testimony unreliable. I found that Mandy, Jagdish and Belsher each had far better memory of the various meetings and negotiations.

Issues

- [33] The issues are as follows:

- a) What is the family property to be divided pursuant to the FLA? More specifically:
 - i. Is the Property family property?
 - ii. Was the transfer of Belsher's interest in the Property back to his father in 2014 a fraudulent conveyance?
 - iii. What does Joanne owe Belsher in compensation for her disposal of family property including RRSP's, Computershare investment, TFSA's and Belsher's jewelry?
- b) Would it be significantly unfair to divide the family property equally between Belsher and Joanne?
- c) Has Joanne established her claim for unjust enrichment/constructive trust against Mandy and Jagdish?
- d) Are Mandy and Jagdish entitled to fair market value rent from Belsher and Joanne for occupying the Property?
- e) Are Mandy and Jagdish entitled to damages for abuse of process by Joanne filing a CPL against the Property?
- f) Is Joanne entitled to spousal support from Belsher and if so, how much?

Family Property

[34] Part 5 of the FLA provides the legislative backdrop for property division between separated spouses.

[35] Section 81 of the FLA provides that on separation, the spouses are each presumptively entitled to an undivided half interest in all "family property".

[36] Family property is defined in s. 84 of the FLA. The relevant portions of s. 84 are as follows:

84 (1) Subject to section 85 [excluded property], family property is all real property and personal property as follows:

- (a) on the date the spouses separate,
 - (i) property that is owned by at least one spouse, or
 - (ii) a beneficial interest of at least one spouse in property;
- (g) the amount by which the value of excluded property has increased since the later of the date
 - (i) the relationship between the spouses began, or
 - (ii) the excluded property was acquired.

Which Assets Meet the Definition of Family Property?

[37] I will address the assets owned by each party as at the date of separation starting with Joanne and then turning to Belsher.

Joanne's Assets at Separation

[38] The assets owned by Joanne as of the separation date in April 2018 were:

- a) RRSPs of \$5,047;
- b) A Computershare investment worth \$1,595.18; and
- c) A TFSA in an unknown amount.

[39] I find that Joanne unilaterally disposed of the RRSP's after separation. Joanne's 2019 and 2020 tax returns, which Joanne produced after the trial commenced, show disposals of RRSPs totalling approximately \$7,500. Given Joanne's lack of full disclosure, I infer that the \$5,047 of RRSPs owned at separation increased in value to \$7,500 before they were cashed by Joanne in 2019 and 2020. Belsher is therefore entitled to \$3,750 based on his presumptive one-half interest under the FLA, subject to Joanne's claim to an unequal division of family property which I will address below.

[40] Belsher is also entitled to a presumptive one-half interest in the Computershare investment, or approximately \$800, subject to Joanne's claim to an unequal division of family property, which I will address below.

[41] Belsher is also entitled to a presumptive one-half interest in the TFSA account, subject to Joanne's claim to unequal division. Joanne has not provided full disclosure regarding the value of the TFSA at separation or currently. Belsher's evidence which I accept is that he and Joanne lived above their means throughout their relationship. As such, I find it unlikely that Joanne would have had TFSA's worth more than her RRSP's. I am prepared to infer that the TFSA was of similar value to the disposed RRSP's, or \$7,500.

[42] Finally, after the separation, Joanne unilaterally disposed of Belsher's jewelry items that were stored in the couple's safety deposit box. These items have an unknown monetary value. They also have sentimental value to Belsher. Joanne acted unilaterally in disposing of items belonging to Belsher. At trial, she was vague and evasive regarding what moneys she received for Belsher's items or where she sold them. In the event that Joanne still possesses any of Belsher's items from the safety deposit box, she shall return such items through counsel within 30 days. In addition, I will infer that the disposed items had a value of approximately \$9,200.

[43] I will further address compensation for Joanne's disposal of the RRSP's, Computershare Investment, TFSA and jewelry below when I address Joanne's claim for spousal support.

Belsher's Assets at Separation

Relevant Facts in Determining Whether or Not Belsher Owned an Interest in the Property at Separation

- [44] I will now address whether or not Belsher owned an interest in the Property at the separation date. At the outset of Belsher and Joanne's relationship Belsher's parents lived in the upstairs portion of the Surrey Property and Belsher and Joanne resided in one of the rental suites downstairs. While Joanne testified that she paid \$500 per month rent to Belsher's parents, I accept Belsher's evidence that neither she nor Belsher paid rent to the parents. Joanne claimed she handed the parents cash each month but produced no documentary proof, such as bank statements showing withdrawals to corroborate her evidence. I accept Belsher's evidence that he and Joanne lived beyond their means and did not have extra money to pay rent. I find that they lived rent-free with Belsher's parents other than paying for cable, phone, BC Hydro and Terasen Gas from 2009 on.
- [45] I accept Belsher's evidence that in 2011, his father Gurdev wanted to give him a chance to be financially responsible and take over the payments for the Property. I accept Belsher's evidence that the deal was if Belsher took over the expenses for the Property including the mortgage (although the rental income covered that), utilities and property taxes, Gurdev would then consider granting Belsher an ownership interest in the Property. I accept that Gurdev then transferred a one-half legal interest to Belsher for \$1 based on this understanding.
- [46] I accept that Belsher and Joanne paid the utilities for the Surrey Property and the rental income from the suites went towards paying the mortgage. It is clear however, that Belsher and Joanne failed to pay the property taxes for three years in a row and did not inform his father. This is consistent with the letter that Belsher received from the property tax authority in or about July/August 2014, which threatened a tax sale of the property based on the three years of unpaid property taxes.
- [47] Belsher, Mandy and Jagdish all testified that they and Joanne all met at the Chef Kabob restaurant on August 24, 2014, for lunch to discuss the unpaid tax arrears. Belsher, Mandy and Jagdish gave consistent, detailed accounts of the conversation at the restaurant. Belsher, Mandy and Jagdish testified that they met to discuss that Belsher and Joanne had failed to pay the property taxes for three years, that Belsher and Joanne did not have the money to pay the taxes and that Gurdev was unaware of the unpaid taxes or of the risk of a tax sale. I accept that Mandy and Jagdish were not happy with Belsher and Joanne for failing to pay the taxes and requiring a sudden financial bailout. Mandy gave extremely compelling testimony describing her shame and embarrassment to have to ask her husband Jagdish to bail out her brother again.

- [48] Joanne adamantly denies being at the restaurant that day or at any meeting with Belsher, Mandy and Jagdish about the unpaid taxes. She adamantly denies being aware of there being unpaid taxes. She denies that she and Belsher asked Mandy and Jagdish for help. Jagdish was able to produce the itemized lunch bill for the Chef Kabob meeting, which shows that four lunches were purchased including a vegetarian meal. Joanne is a vegetarian and the others are not.
- [49] Joanne does not explain why the taxes were unpaid. Joanne does not suggest that she and Belsher had the money to pay the taxes. The meeting at the Chef Kabob took place on August 24, 2014. The tax arrears were paid by Mandy and Jagdish the very next day on August 25, 2014. Joanne does not explain how Mandy and Jagdish would have otherwise learned of the unpaid taxes or why they paid them if Belsher owned the Property. Joanne simply denies knowing about any tax arrears. However, I find that Joanne was well aware of the tax arrears.
- [50] I accept the evidence of Belsher, Mandy and Jagdish regarding the meeting at the Chef Kabob. I reject Joanne's evidence.
- [51] Joanne denies that Gurdev was angry with Belsher for not paying the taxes. Belsher and Mandy testified that Gurdev was very upset that Belsher had not shown himself to be financially responsible and had put the Property at risk of a tax sale. It makes sense in the circumstances that Gurdev would be upset. His only significant asset was the Property. He and his wife worked hard to acquire their previous home which they sold and used the sale proceeds to acquire the Property prior to Belsher and Joanne's marriage. The Property was Gurdev's home and most significant asset. It makes sense that Gurdev would be upset with Belsher for putting the home at risk. It makes sense in the circumstances that Gurdev demanded Belsher transfer the Property back to him. Belsher then transferred the Property back to his father.
- [52] Belsher gave detailed, compelling evidence that he signed the transfer papers at his lawyer Mr. Christ's office on August 29, 2014 and then immediately dropped them off at Rosborough and Company law offices as requested by Gurdev. Belsher testified that Joanne was with him in the car that day and that after they tended to this business, they were on the road for a weekend in Harrison Hot Springs that had been planned with other couples. He described the route they took, tendered proof of paying for gas for his vehicle on the way and provided pictures of him and Joanne and the other couples on the trip.
- [53] Joanne maintains that she was unaware that Belsher signed transfer papers to transfer his interest in the Property back to Gurdev. She denies that she went with Belsher to a lawyer's office or that they stopped to go to either law office on the way to Harrison. She denies they dropped off papers together at the other lawyer's office so Gurdev's lawyers could do the transfer. She also maintains that she and Belsher were having marital difficulties during the summer of 2014 and the purpose of the Harrison trip was to work on their relationship.

- [54] I accept Belsher's evidence that when his father asked him to transfer back the Property, Belsher was unaware that his father planned to gift the Property to Mandy. Joanne alleges that Belsher conspired with Gurdev and Mandy to transfer the Property out of his name so as to avoid Joanne's marital claims. There is no plausible evidence to support this. It is pure speculation on Joanne's part. I accept Mandy's and Belsher's evidence that they did not have any conversations about trying to defeat Joanne's interests. I accept that when Gurdev found out that Belsher and Joanne had not paid the taxes, he was angry and disappointed that Belsher had not shown himself to be financially responsible and requested that Belsher transfer the Property back to him immediately. I accept Mandy's evidence that after Belsher signed the papers to transfer the Property back to Gurdev, Gurdev approached Mandy and told her that he wanted to gift her the Property. Gurdev had no money to pay the taxes. He had other debts too and he obviously had learned that he could not rely on Belsher to assist financially. It makes sense that Gurdev trusted Mandy because she and Jagdish were financially stable and had just saved the Property from being sold at a tax sale. He then proceeded to transfer a one half interest in the Property to Mandy and signed a gift letter confirming that he intended the transfer as a gift, unlike the original transfer to Belsher.
- [55] I reject Joanne's version of events. I also reject her evidence that she and Belsher were having marital difficulties at the time of the transfer. Her evidence is not credible. Belsher's description of the Harrison trip is detailed, compelling and consistent with the photographs. Belsher described that he and Joanne and two other couples spent the weekend doing fun group activities such as boating. Belsher and Joanne look very happy in the pictures. I accept Belsher's evidence that Joanne was with him on August 29, 2014, when he went to Mr. Christ to sign the transfer papers and also with him when he dropped off the papers at Rosborough and Company the same day. I also accept Belsher's evidence that he and Joanne were not having marital difficulties in 2014.
- [56] Belsher and Joanne went to a wedding together at the beginning of the summer of 2014, approximately six weeks before the transfer of the Property back to Gurdev. Joanne and Belsher also went on a subsequent trip to Mexico for Joanne's birthday in the fall of 2014 or 2015 with Mandy and Jagdish. Pictures were produced for both occasions. A video from Joanne's birthday dinner in Mexico was also played and depicted a happy birthday celebration. Joanne and Belsher appear to be a happy couple on both occasions.
- [57] Joanne and Belsher were likely stressed when they got the tax letter after failing to pay the property taxes for three years. They did not have money to pay the taxes. They would have known how upset Gurdev would be when he found out. It was likely stressful for Joanne to be living with Gurdev knowing that he would have to find out that they had not paid the taxes. However, after Belsher and Joanne met with Mandy and Jagdish at Chef Kabob on August 24, 2014 and Mandy paid all the taxes on August 25, 2014, I am sure that they felt some relief. I accept Belsher's evidence that he had no difficulty acceding to his father's request to transfer the Property back to his father. It makes sense that Belsher wanted to sign the papers immediately after not paying the taxes and letting his father down.

- [58] However, even by Joanne's account, she and Belsher did not actually contemplate separating in 2014 or anytime until 2018.

Analysis

- [59] Other than his jewelry which Joanne removed from the safety deposit box and disposed of post-separation, Belsher submits that he did not own any legal or beneficial interest in any property as of April 2018. In other words, Belsher submits that he owned no family property as of the separation date. In specific regards to the Property, Belsher submits that Gurdev transferred him a one-half legal interest in 2011 on the basis that if Belsher paid the expenses for the Property and showed himself to be financially responsible, Gurdev would consider giving him an interest in the Property. Until then Belsher would hold his interest in the Property in trust for Gurdev. Then, when Belsher failed to pay the property taxes and the Property was put at risk of a tax sale, Gurdev demanded Belsher transfer title back to Gurdev, which Belsher did in August 2014. Belsher maintains that from 2011 through 2014, Gurdev was the sole beneficial owner of the Property despite Belsher's name being on title.
- [60] Joanne, on the other hand, claims that Belsher continued to own a beneficial interest in the Property as of the date of separation, even though he was no longer on title. She claims that the Property forms her and Belsher's family property pursuant to the FLA despite that it was registered to Mandy and Jagdish as of the date of separation. Joanne submits that when Gurdev put Belsher on title in 2011, Belsher became both a legal and beneficial owner of the Property. She submits that Belsher's transfer of his interest back to his father in August 2014 was a fraudulent conveyance because it was done without her knowledge during a time when she and Belsher were having marital difficulties and Belsher's/Gurdev's intent was to defeat her interest in the Property under the FLA. As such, she submits that the transfer from Belsher back to Gurdev in 2014 is void and that all subsequent transfers are void.
- [61] Mandy and Jagdish submit that they are the legal and beneficial owners of the Property currently and as of April 2018. They maintain that neither Belsher nor Joanne own an interest in the Property. They agree with Belsher's submissions that from 2011 through August 2014, Belsher only owned a legal interest in the Property and that Belsher held his interest in trust for Gurdev who was the sole beneficial owner of the Property. They maintain that the transfer from Belsher back to Gurdev was based on Belsher and Joanne not living up to their financial responsibilities. They disagree that the transfer was done to somehow defeat Joanne's interests. They maintain that Gurdev, as sole owner of the Property, was entitled to do what he wanted with the Property in 2014 including gifting a one-half interest to Mandy who, with Jagdish, had saved the Property from a tax sale. Mandy and Jagdish note that when Gurdev put Mandy on title, he signed a deed of gift in front of his lawyer to confirm that he was gifting both a legal and beneficial interest in the Property to Mandy. Furthermore, they note that, consistent with ownership, Mandy and Jagdish have paid the mortgage, property taxes and City utilities for the Property from September 2014 to date.

- [62] I will first address the legal and beneficial ownership of the Property from 2011 through August 2014. Section 23 of the Land Title Act, R.S.B.C. 1996, c. 250 contains a presumption that the registered owners are the beneficial owners of the title. However, in this case, Belsher has satisfied me that he held his registered one-half interest in trust for Gurdev who was the sole beneficial owner of the Property. I am satisfied that while Belsher was on title to the Property, he never owned a beneficial interest.
- [63] Belsher did not pay Gurdev anything (other than the stated nominal consideration of \$1) for his interest in the Property. There is no presumption of advancement with respect to transfers from a parent to an adult child: *Pecore v. Pecore*, 2007 SCC 17 at para. 40. Equity presumes bargains not gifts: *Pecore* at para. 24; *Kerr v. Baranow*, 2011 SCC 10 at para. 19; *Suen v. Suen* 2013 BCCA 313 at paras. 36-38.
- [64] Further, unlike Gurdev's 2014 transfer to Mandy, the transfer of an interest in the Property to Belsher in 2011 was not accompanied by a gift deed signed by Gurdev. I accept Belsher's evidence that his father transferred an interest in the Property to him in 2011 to give him a chance to show he was financially responsible and could financially support the Property. I accept that the arrangement was that if Belsher showed that he could pay the expenses of the Property such as the mortgage, property taxes and other expenses, Gurdev would consider giving Belsher ownership at a later date. Until then, I accept that Belsher held his legal interest in trust for Gurdev who was the sole beneficial owner.
- [65] I find that from 2011, when the Property was transferred to Belsher by Gurdev, through to August or September 2014 when it was transferred back to Gurdev, Belsher held his interest in the Property in trust for Gurdev. I accept Belsher's evidence that his father transferred the Property to him for no consideration to give him a chance to show financial responsibility and when he failed to do so, his father asked him to transfer it back and Belsher complied.
- [66] In the event that I am wrong and Belsher did in fact own a beneficial interest in the Property, I will address Joanne's arguments that Belsher's conveyance of his interest to Gurdev in August or September 2014 was fraudulent and ought to be void.
- [67] The Fraudulent Conveyance Act, R.S.B.C. 1996 c. 163 [FCA] states:
- Fraudulent conveyance to avoid debt or duty of others
- 1 If made to delay, hinder or defraud creditors and others of their just and lawful remedies
- (a) A disposition of property, by writing or otherwise,
- ..
- is void and of no effect against a person or the person's assignee or personal representative whose rights and obligations are or might be disturbed, hindered, delayed or defrauded, despite a pretence or other matter to the contrary.

Application of Act

2 This Act does not apply to a disposition of property for good and valuable consideration and in good faith lawfully transferred to a person who, at the time of the transfer, has no notice or knowledge of collusion or fraud.

- [68] Two questions need to be addressed. First, does Joanne qualify as a "creditor" or "other" for the purpose of the FCA? Second, if so, was the transfer intended to defraud Joanne and/or defeat her claims to the Property?
- [69] The jurisprudence is clear that an "estranged" spouse can be a "creditor and others" as defined in the FCA: *A.W.D. v. C.C.D.D. and S.J.D.*, 2005 BCSC 1142 at para. 146; *B.A. v. L.S.*, 2017 BCSC 1796 at para. 67. These cases however do not clearly define what constitutes estrangement.
- [70] In *Bajwa v. Bajwa*, 2024 BCSC 1428, Justice Lamb found that the spouse was not a creditor or other as identified in s. 1 of the FCA. The transfer in *Bajwa*, as in the case at bar, occurred years before the couple separated. Justice Lamb specifically drew the distinction between this situation as opposed to one "where one spouse transferred property after the spouses had separated or were on the verge of separating, giving rise to a potential fraudulent conveyance": at para. 93. Rather, this was a situation where the parties "continued to live as a married couple for more than three years" and Lamb J. was "not convinced that the transfer had anything to do with interfering with Dr. Bajwa's uncrystallized potential future Family Law Act property claim or that she fell into the category of 'creditor' or 'others'": at para. 93.
- [71] Further, in *Harding v. Harding*, 2024 BCSC 185, Justice Watchuk's analysis makes clear that there must be, for example, a triggering event, clear evidence of marriage breakdown, or active or imminently impending separation for a spouse to be estranged for the purposes of having standing under the FCA. Without cogent evidence of true estrangement, the spouse is contemplated under s. 1 of the FCA. In *Harding*, Watchuk J. provides a helpful overview and outline of the law on this point:
- [169] Numerous cases have found "estranged spouses" to fit within the phrase "creditors and others" for the purposes of the FCA: see *Murdoch v. Murdoch et al.*, [1977] 1 W.W.R. 16 at 20-21, 1976 CanLII 260 (Alta. K.B.); *Jack v. Parkinson*, 1994 CanLII 2638 (BC CA), 91 B.C.L.R. (2d) 96 at paras. 9-11, 13, [1994] 6 W.W.R. 537 (C.A.); *Valaire v. Valaire*, 1999 CanLII 5829 at para. 44 (B.C.S.C.); *Bailie v. Bailie*, 2010 BCSC 946 at paras. 143, 147, 156, *aff'd*, 2011 BCCA 176. These cases are distinguishable from the facts at hand. Notably, the impugned conveyance in each of those cases occurred after not only the formation of the marriage or marriage-like relationship, but also its subsequent breakdown.

[170] Iacobelli is likewise readily distinguishable from this case: (1) the plaintiff and defendant spouses were in a marriage-like relationship at the time of the transfers; and (2) McDermot J. found that the defendant's transfers of property while the marriage was breaking down established his intent to defraud the claimant, because he knew the family assets were at risk of being equalized in the foreseeable future: at paras. 176-178.

[171] Professor Robinson Q.C. in his text *British Columbia Debtor-Creditor Law and Precedents* (Toronto Thomson Reuters) (loose-leaf updated 2023) at § 10:68 discusses the potential claims a spouse may have under family property legislation:

No Potential Claim Regarding Conveyances Made Prior to Separation or Death

If a spouse makes a conveyance before there was a separation of the spouses, and the plaintiff spouse is not otherwise a creditor of the defendant spouse at the time of the conveyance, the plaintiff spouse does not have standing to commence a fraudulent conveyance action.

[172] This principle was illustrated in *Easingwood v. Cockroft*, 2011 BCSC 1154, aff'd 2013 BCCA 182, where the plaintiff wife asserted that various transfers of property to a trust were fraudulent. One of the issues to be determined was whether the plaintiff had the necessary standing under "creditors and others" to bring an action under the FCA.

[173] With regard to this issue, Justice Dillion in *Easingwood* observes that the plaintiff and defendant were happily married at all material times and there was no evidence that the marriage was about to break up. With regard to the plaintiff's claim under the FCA, Dillion J. concluded that the plaintiff was not a creditor or other and so the plaintiff lacked standing to bring a claim. Justice Dillion states that, in the context of a family law proceeding, standing under "creditors and others" as per the FCA requires an actual claim or legal entitlement under family law legislation:

[51] In my view, in order to qualify as a potential claimant so to be a creditor or other within the meaning of the FCA, a spouse must either have begun an action under the FRA or there must be an evidential basis to reasonably conclude that the claimant has a potential right or claim to have asserted entitlement to family assets on marriage breakup under s. 56 of the FRA. The plaintiff does not qualify under any of these criteria. Kay and Reg were happily married at all material times and there was no likelihood that the marriage was about to break up in November 2008. There were no irreconcilable differences between them, no periods of separation, or indicators of strife except for the stress of Reg's illness

[Emphasis added.]

[174] In *Mawdsley* at paras. 79-84, Newbury J.A. touches on this issue and cites with approval Justice Feldman's interpretation of "creditors and others" in the family law context in *Stone v. Stone*, 203 D.L.R. (4th) 257, 2001 CanLII 24110 (O.N.C.A.).

- [175] Justice Feldman states that spouses are not in a "constant debtor-creditor relationship", and this relationship arises only after a triggering event giving rise to a legal entitlement under Ontario's Family Law Act, R.S.O. 1990 C. F.3: Stone at paras. 25-33. He also notes that "others" includes persons who, though not judgment creditors at the time of the impugned conveyance, have a claim for unliquidated damages: Stone at para. 23. In the family law context:
- [25] in order for a spouse to qualify as a person who is intended to be protected from conveyances of property made with intent to defeat her interest, she must have had an existing claim against her husband at the time of the impugned conveyances, that is a right which she could have asserted in an action.
- [Emphasis added.]
- [72] Joanne submits that the parties were having marital problems in the summer of 2014 when Belsher transferred his interest in the Property back to his father. Belsher denies that the parties had marital difficulties in the summer of 2014. Neither party claims that they were ever separated in 2014 or at any time before April 2018.
- [73] Under the FLA, a spouse's interest in family property or property in the name of a spouse arises on separation. While Belsher and Joanne may have had some difficulties during their marriage and Joanne may have stayed from time to time with her parents, I find that those difficulties never arose to the level of either of the parties contemplating separation.
- [74] I accept Belsher's evidence that while the tax arrears issue was stressful, he and Joanne were otherwise happy as a couple. They attended various events as a couple during 2014 including Belsher's cousin's wedding in California in June 2014, approximately six weeks before the transfer of the Property. I accept Belsher's evidence that he and Joanne went together with other couples on a trip to Harrison Hot Springs for a weekend and left the same day that he signed the transfer papers and dropped them off at his father's lawyers' office. Later in the fall of 2014, Belsher and Joanne spent several days on vacation in Mexico with Mandy and Jagdish and happily celebrated Joanne's birthday. Belsher presented photos and videos taken on the trip, which corroborated his evidence that he and Joanne remained a couple and enjoyed each other's time together before, during and after the 2014 transfer of the Property back to his father.
- [75] I reject Joanne's evidence that she only attended the wedding in June 2014 because she was obliged to attend with Belsher to represent Belsher's family. I reject Joanne's evidence that she and Belsher went on the Harrison Hot Springs weekend trip to work on their relationship. I find it improbable that if she and Belsher were having significant difficulties in their relationship that they would choose a trip involving other couples to work on their relationship. Joanne also did not adequately explain why she would vacation in Mexico with Belsher and her brother and sister in law for her birthday if she and Belsher were estranged or having significant marital difficulties.

- [76] Overall, I find Joanne's evidence that she and Belsher were having marriage difficulties in 2014 to lack credibility. I accept Belsher's evidence that he and Joanne did not have any serious difficulties in their marriage until much later than 2014. I accept Belsher's evidence that he had no plan to separate or divorce Joanne in 2014 when he signed the Property back to his father.
- [77] I find that Belsher and Joanne did not discuss separation or divorce in 2014, nor at any time prior to 2018. Furthermore, Joanne's original counterclaim and her amended counterclaim filed just before trial each state the separation date as April 26, 2018. Her pleadings do not state that there were any other periods of separation.
- [78] For all these reasons, I find that Joanne was not a "creditor" or "other" pursuant to the FCA at the time of the transfer of the Property from Belsher back to his father in 2014. As such, she does not have standing under the FCA to challenge the transfer.
- [79] However, in the event I am wrong, I will address the second question, namely whether Belsher transferred his interest in the Property back to his father in order to defeat Joanne's interests pursuant to the FLA. I reject Joanne's claim that the transfer was done to defeat her interests for the reasons that follow.
- [80] I accept Belsher's evidence that his father was upset and disappointed with Belsher for not living up to his promise to pay for the property taxes, not telling his father earlier and for putting the Property at risk of a tax sale. I accept Belsher's evidence that his father asked him to transfer the Property back. I accept that Belsher's failure to take financial responsibility for the Property was the reason Gurdev asked him to transfer the Property back to him. I accept Belsher's evidence that he acceded to his father's request to transfer the Property because he had blown his chance to show his father he could be financially responsible for the Property. I accept Belsher's evidence that there was no nefarious or ulterior reason for transferring the Property back to his father.
- [81] I also find that Joanne was well aware of all that was going on in regards to the Property in the summer of 2014. It is not credible that Joanne was unaware of the outstanding property taxes or the transfer. Belsher, Mandy and Jagdish all gave very detailed evidence regarding the August 24, 2014 meeting at the Chef Kabob restaurant. Each of Belsher, Mandy and Jagdish described how they felt and what was discussed in their own words, with their own feeling as if they were reliving the meeting in front of me. Joanne simply denied being at the meeting. Jagdish even found the receipt for the lunch which he paid and identified what each person ordered. The receipt corroborates Jagdish's evidence that four lunches were purchased that day on August 24, 2024 and one of the lunches was a vegetarian meal. Joanne is a vegetarian but none of the other three are vegetarian. The meeting was one day prior to Mandy and Jagdish paying the outstanding property taxes with a cheque which is what Belsher testified the meeting was for - to ask Mandy and Jagdish to save the Property from a tax sale.

- [82] The timing of Belsher signing the property transfer is almost immediately after Belsher fessed up to his father regarding his failure to pay the expenses. I accept Belsher's evidence that he felt that he had failed to live up to his father's condition and felt badly about that and that the Property was his father's, not his. I accept Belsher's evidence that Belsher was unaware at the time of transfer that his father planned to transfer the Property into Mandy's name once Belsher signed.
- [83] I accept Mandy's evidence that her father said he wanted to gift her the Property. It makes sense in the context that Gurdev was disappointed with Belsher and would look to someone other than Belsher for financial assistance with the Property. Mandy and Jagdish were older and financially stable and had paid the arrears of property taxes and thereby saved the Property from a forced sale when neither Gurdev nor Belsher or Joanne were in a position to do so. I see nothing suspect about Gurdev signing a gift deed in favour of Mandy and transferring the Property into her name jointly with him. Consistent with ownership, Mandy took over paying all expenses of the Property that were not covered by the rental income from the transfer on September 11, 2014. Contrary to Joanne's testimony, I do not accept that Belsher paid for the mortgage by depositing his cheque into an account in his and his father's joint names. Belsher and Joanne lived beyond their means. At times Belsher inappropriately took money from the rental income. Belsher and Joanne failed to pay the property taxes. They had no money with which to make mortgage payments.
- [84] Mandy's evidence is that in April 2015, Gurdev had personal visa bills that he could not pay. He had also incurred a balance on a line of credit. As such, she sought to refinance the mortgage to pay off Gurdev's personal debt. She and Gurdev were unable to qualify for a mortgage. As such, Jagdish was added to the title to the Property along with Gurdev and Mandy. A new mortgage of \$200,000 was obtained and the proceeds went to pay off Gurdev's line of credit and visa bills and the old mortgage. The moneys from the rental suites (both downstairs suites until Belsher and Joanne separated and then only the one-bedroom suite after they separated) went towards paying the mortgage, but Mandy and Jagdish were responsible for the balance of the mortgage and the rest of the expenses for the Property.
- [85] There is no evidence to support that there was a fraudulent conveyance. There is no evidence to support that the transfer from either Belsher to his father or from Gurdev to Mandy was to defeat Joanne's interests. Joanne and Belsher paid nothing toward the original purchase of the Property. They did not pay the mortgage either - the rental income paid the mortgage. Joanne and Belsher did not pay the property taxes. They merely paid utilities and occasional groceries. I find that the amount that Belsher and Joanne contributed to the utilities (Shaw cable, BC Hydro and Teresan gas, phone, but not City of Surrey utilities) and groceries was less than fair market value rent would have been for staying at the Property during their relationship. They are the ones that benefitted from the arrangement, not Belsher's parents.

[86] For the above reasons, the Property is not family property in whole or in part. Belsher did not own any legal or beneficial interest in the Property as of April 2018 when the parties separated. As such, the only property to address under the FLA is the RRSPs, TFSA, and Computershare investment which were in Joanne's name when the parties separated, in addition to the jewelry belonging to Belsher. Joanne's evidence is that she sold all so it is the proceeds to be addressed by way of compensation to Belsher as opposed to the actual property to divide. Joanne submits that it would be significantly unfair to divide the property equally. I will now address her claim to unequal division of family property.

Joanne's Claim for Unequal Division

[87] Joanne submits that it would be significantly unfair to divide the family property equally, and instead seeks an unequal division.

[88] Section 95(1) of the FLA provides that family property may be divided unequally if it would be significantly unfair to divide family property equally considering the factors set out in s. 95(2):

Unequal division by order

95 (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:

- (a) the duration of the relationship between the spouses;
- (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1) [setting aside agreements respecting property division];
- (c) a spouse's contribution to the career or career potential of the other spouse;
- (d) whether family debt was incurred in the normal course of the relationship between the spouses;
- (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
- (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
- (g) the fact that a spouse, other than a spouse acting in good faith,
- (i) substantially reduced the value of family property, or
- (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
- (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;

- (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.
- (3) The Supreme Court may consider also the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met.

[Emphasis added.]

[89] Joanne specifically relies on section 95(2)(g) and (3) which I have bolded above.

[90] In *Singh v. Singh*, 2020 BCCA 21, the Court of Appeal addresses the meaning of "significant unfairness" in section 95 of the FLA:

[129] First is the question of the meaning of the term "significant unfairness."

[130] In *Jaszczewska v. Kostanski*, 2016 BCCA 286, Justice Harris, for the Court, engaged in an extensive analysis of s. 95. He first noted that the Legislature sought to increase certainty, fairness, and predictability in property division matters with the FLA by reducing the discretion of the courts to depart from equal division: at para. 36. The test in the previous legislation (Family Relations Act, R.S.B.C. 1996, c. 128) only required unfairness, whereas the FLA requires "significant unfairness." In addition, the legislature more precisely specified the factors to be considered in applying this threshold.

...

[133] In *V.J.F. v. S.K.W.*, 2016 BCCA 186, Justice Newbury described s. 95 as requiring a high threshold of "significant unfairness" to depart from equal division: at para. 81. Other cases have reached similar conclusions about the high threshold necessary to reapportion assets under s. 95. In *Khan v. Gilbert*, 2019 BCCA 80, for example, Justice Fenlon noted that cases in which unequal contribution was found to reach the significantly unfair threshold have involved marked, prolonged, and intentional or unexplained disparities in contribution to family burdens: at para. 32.

[134] In summary, it is clear that the Legislature intended the general rule of equal division to prevail unless persuasive reasons can be shown for a different result: *Jaszczewska* at para. 41. Reapportionment will require something objectively unjust, unreasonable, or unfair in some important or substantial sense. This is in contrast to the previous legislation where courts had discretion under s. 65 to reapportion property or debt where it would be simply "unfair" not to do so. The threshold for "significant unfairness" is high. There must be a real sense of injustice that would permeate the result if the court did not deviate from the presumptive equal division.

- [91] I will now consider whether Joanne has met the onus of demonstrating that an unequal division of family property is justified.
- [92] The first factor in section 95(2) is the duration of the relationship. Here, the relationship was moderately long at nearly 14 years. This is not a factor that would tend to support Joanne's claim for an unequal division.
- [93] Having addressed the duration of the relationship, I will now turn to the other factors in s. 95(2). In my view, sub-sections 95(2)(b) through (h) are not relevant. Joanne specifically relies on s. 95(2)(g). However, given my determination that the Property was never family property, s. 95(2)(g) is inapplicable to Belsher's transfer of the Property to Gurdev in 2014.
- [94] That leaves s. 95(3). I address spousal support in detail below under its own section. I have ordered Belsher pay Joanne lump sum spousal support which is offset against the compensation order that Joanne owes Belsher for his one-half share of family property. I see no reason to depart from an equal division of the family property, given the relatively modest claim Joanne has to spousal support. The lump sum spousal support I have ordered appropriately and adequately addresses spousal support.
- [95] In all of the circumstances, I find that Joanne has not satisfied the onus of establishing that it would be significantly unfair to divide the family property equally.
- [96] Joanne shall pay a compensation payment to Belsher as follows:
- a) \$3,750 for his one-half share of the RRSP's;
 - b) \$800 for his one-half share of the Computershare investment;
 - c) \$3,750 for his one-half share of a nominal TFSA, the total of which I have inferred/estimated to be worth \$7,500 like the RRSP doing my best with limited evidence;
 - d) \$9,200 representing the value I have inferred/estimated for Belsher's share of the personal property in the safety deposit box which Joanne disposed of, doing my best with limited evidence.
- [97] Thus, in total, Joanne shall pay the sum of \$17,500 in full and final satisfaction of all property claims within 30 days, which sum shall be offset against the lump sum spousal support award addressed below. I am mindful that I have estimated items (c) and (d) above at higher values than Joanne might suggest. However, Joanne has refused to produce disclosure regarding the value of the TFSA. She also unilaterally disposed of Belsher's items from the safety deposit box and did not produce full disclosure about what proceeds she received or where she sold the items. She may have sold items for less than fair market value. She may not have sold items at all. In the circumstances, I have drawn what I consider reasonable inferences. I do not at this late stage think it is useful to order further disclosure. In my view, that would further drag matters out and all of the parties need to be able to get on with their lives.

Joanne's Unjust Enrichment Claim and Constructive Trust

[98] Joanne submits that in the event the Property is not family property at the date of separation, she has a claim against Mandy and Jagdish based in unjust enrichment and constructive trust.

[99] Joanne submits that she has made direct and indirect contributions to the Property and Mandy and Jagdish have been enriched and that she has been correspondingly deprived. Joanne maintains that there is no juristic reason for the enrichment of Mandy and Jagdish.

[100] Joanne claims that her contributions include:

- a) Providing care for Jaspal from 2008 to 2011, including helping her get up, braiding her hair, making her tea and food and taking her to appointments;
- b) Helping Gurdev from 2008 to 2015, including doing housework, cooking, driving him to appointments and to the park;
- c) Paying monthly "rent" of \$500 to Gurdev and later to Mandy and Jagdish from November 2020 to date;
- d) Paying utilities and insurance in relation to the Property.

[101] In terms of Joanne's assistance to Jaspal and Gurdev, I prefer the evidence of Belsher and Mandy over Joanne's evidence. Belsher and Mandy testified that Joanne exaggerated her contributions to caring for Jaspal and Gurdev. I accept the evidence of Mandy and Belsher that even though Jaspal had Parkinson's disease, she was relatively independent until a few months before she died. Further, I accept Belsher and Mandy's evidence that it was primarily Gurdev who helped Jaspal with her needs including helping her to bathe, get dressed, cook, and make tea. As well, I accept that Mandy would regularly visit with Jaspal and help Jaspal as needed when Mandy took her children to school nearby.

[102] I reject Joanne's evidence that she worked part time instead of full time in order to care for her in-laws from 2008 to 2013. Joanne attended school during at least a portion of the time during which she worked part time. Further, I find that Belsher and Mandy were hands-on in helping both Jaspal and Gurdev. I also find that Belsher and Gurdev each did housework, not just Joanne.

[103] Joanne also admitted that she did not expect to be paid for helping her in-laws.

[104] I find that Joanne's care of Jaspal and Gurdev do not rise to the level of unjustly enriching Jaspal or Gurdev. Even if I am wrong, the claim would be as against the estates of Jaspal or Gurev, not a claim to unjust enrichment of Mandy and Jagdish.

[105] As mentioned above, Joanne's claims to have paid rent to Gurdev of \$500 per month are not proven. She and Belsher did not pay rent to Gurdev. They paid for utilities such as cable, hydro and heat, but they also used these services. They contributed to groceries, but they also ate these groceries. Overall, I find Joanne and Belsher's contributions to the utilities

and other expenses were far less than what they would pay in fair market value rent if they were to have paid Gurdev rent or rented somewhere else. Even if they contributed to the account through which the house insurance was paid, they are still far ahead in terms of the benefits they received versus what they paid. As such, Joanne and Belsher were the ones who benefitted or were enriched from the arrangement.

- [106] It is true that Belsher and Joanne each paid \$500 per month rent to Mandy and Jagdish on an interim without prejudice basis after Justice Blok ordered them to in November 2020. However, as mentioned above, the \$500 does not come close to the fair market rental value of the suites they occupy.
- [107] In conclusion, Joanne has fallen far short of demonstrating that Mandy and Jagdish have been enriched by her contributions or that she has been correspondingly deprived. As such, Joanne's claims for unjust enrichment and constructive trust claims are dismissed.
- [108] I will now address Mandy and Jagdish's claims against Belsher and Joanne for occupational rent and damages against Joanne for filing a CPL against the Property before dealing with Joanne's claims for spousal support against Belsher.

Occupational Rent

- [109] Mandy and Jagdish seek an order "for compensation for retroactive rent" payable by Belsher and Joanne for their occupation of the Property. In the pleadings, they sought the compensation from May 1, 2015, until the parties vacate the Property.
- [110] While not explicit, reading the pleading broadly and purposively, this is a claim for occupational rent. Mandy and Jagdish seek compensation for the deprivation of the use of their Property; specifically, they argue they have been deprived of the use of the rental suites in the Property and deprived of the corresponding rental income due to Belsher and Joanne's joint and separate occupation of the suites.
- [111] Occupational rent is an equitable remedy. The basic principle of occupational rent is that if a person is in occupation without a lease, although the relationship of landlord and tenant will not exist, the law will imply a contract for payment to the landlord or a reasonable amount for the use and occupation of their land: *Dagarsho Holdings Ltd. v. Bluestone*, 2004 CanLII 11271 (ON SC) at para. 26.
- [112] Occupational rent is also a discretionary remedy that should be used cautiously in "order to achieve justice and equity in all the circumstances": *Ross v. Ross*, 2013 BCSC 1716 at para. 50.

- [113] In family law proceedings, occupational rent is typically claimed where one spouse is forced to leave the matrimonial home, or where the spouse that remains claims expenses for the home. The typical claim therefore is for the ousted spouse to charge occupational rent to the spouse that remains. However, in the case at bar, Mandy and Jagdish claim occupational rent against Joanne and Belsher, who remain in the Property despite requests to vacate, as a stand alone claim separate from the marriage.
- [114] The law has evolved to focus less on ouster and more on deprivation and what is just and equitable in the circumstances: *Chung v. Chung*, 2022 BCSC 1592 at para. 110, rev'd in part on other grounds 2025 BCCA 136.
- [115] In *Armstrong v. Kotanko*, 2023 BCSC 989, the defendant brought a counterclaim against the plaintiff for occupational rent of a property which had vested to the defendant upon the death of the original owner. The plaintiff was residing at the property before the death of the original owner rent free and refused to vacate or pay rent when full ownership vested in the defendant. The Court found that the plaintiff had been deprived of the property and the defendant had been unjustly enriched by his ongoing occupation of the property rent free: at para. 75.
- [116] The quantum of occupational rent is determined based on the market value for rent of the property: *Chung* at para. 113; *Reagh Estate (Re)*, 2021 BCSC 1807 at para. 21.
- [117] I find that as of March 1, 2019, Mandy and Jagdish are entitled to occupational rent from Joanne and Belsher. By March 1, 2019, it was clear that Mandy and Jagdish wanted Joanne and Belsher to vacate the Property. They had commenced residential tenancy proceedings against Joanne. They subsequently requested through counsel several times that she vacate the Property. Mandy and Jagdish are the owners of the property and have paid the bulk of the expenses for the Property, yet have been prevented by Joanne and Belsher in renting the upstairs suite of the two-bedroom suite downstairs. They have been deprived of the full use of the Property. Using the midrange of the fair market value rent provided by the expert's report, I am ordering that:
- 1) Joanne shall pay \$2,800 per month for occupational rent to Mandy and Jagdish from March 1, 2019, through June 1, 2025. Total is \$212,800 less any amounts she has paid pursuant to Justice Blok's without prejudice order;
 - 2) Belsher shall pay \$2,050 per month for occupational rent to Mandy and Jagdish from March 1, 2019, through June 1, 2025, totalling \$155,800 less any amounts he has paid.
 - 3) Joanne shall vacate the Property no later than 30 days from the date of these Reasons and leave the Property in good condition. Belsher may stay at the Property only if Mandy and Jagdish consent.

Damages Claim Against Joanne for Filing a CPL

- [118] I have found that Joanne has no proprietary interest in the Property, as it is not family property, nor does she have a claim through unjust enrichment or constructive trust. On that basis, the CPL will be cancelled. What remains is the question of whether the filing of the CPL constituted an abuse of process.
- [119] A party may claim that the filing of a CPL was an abuse of process. To be successful in this claim, the party must prove (1) a collateral or improper purpose; (2) an overt act in furtherance of the collateral or improper purpose; and (3) a resulting loss: *Oei v. Hui* 2020 BCCA 214 at paras. 5-6.
- [120] A collateral or improper purpose is understood as one that is outside the normal incidents of litigation or one that is not reasonably related to the subject matter of the litigation: *Oei* at para. 9; *Epix Developments Ltd. v. Bonnis Development Union Street Limited Partnership*, 2025 BCSC 805 at para. 177. The claiming party may also demonstrate malice by the filing party, such as establishing that the CPL was filed solely as a negotiation tactic: *Epix Development Ltd.* at para. 177; *Taylor v. Banicevic*, 2017 BCSC 1538 at paras. 245-248. CPLs are extraordinary remedies and filing them to "tie up" the property or gain advantage in a negotiation is improper: *Palmer v. Palmer*, 2014 BCSC 1364 at para. 45, rev'd on other grounds 2015 BCCA 438; *Phoenix Homes Limited v. Takhar*, 2023 BCSC 184 at para. 540; *Richter & Associates, Inc. v. 1075 Nelson Development Holdings Inc.*, 2022 BCSC 592 at para. 101.
- [121] The threshold for finding an abuse of process is high. The claim will succeed only where CPL is both improper, meaning it is knowingly false and meritless, and advanced for a purpose that is truly collateral to and outside the ambit of the litigation between the parties: *Phoenix Homes Limited* at para. 541.
- [122] The Courts have been reticent to award damages for an abuse of process in these circumstances where there is not clear and unequivocal evidence of the filing party knowing their purpose was improper, ulterior, or malicious: *Li v. Hu*, 2024 BCSC 778 at paras. 82-84.
- [123] In their closing submissions, Mandy and Jagdish submitted that Joanne filed the CPL with the intent to embroil the Property in this litigation, that she was motivated by revenge, and that she knew her claim to the Property was not substantiated on the facts.
- [124] While Joanne's claims to the Property ultimately failed, I do not find that they were completely unfounded, or that the CPL was registered on the Property solely for the malicious purpose of embroiling the Property and disrupting Mandy and Jagdish's lives. While I found Joanne's testimony to lack credibility and preferred the evidence of other witnesses, her claim to the Property and filing of the CPL cannot be said to have been truly collateral to the litigation. Further, I find that the evidence does not establish the malicious and revengeful motive that Mandy and Jagdish are claiming.

Spousal Support

- [125] Joanne seeks spousal support on compensatory and non-compensatory grounds. She submits that for the first two-thirds of the relationship, she only worked part-time. She has only started working full time as a medical office assistant with Dr. Bernstein for the last third of the relationship. Joanne submits that even after she was working full-time, Belsher's income continued to be greater than hers. She claims that they relied on Belsher's income to pay their expenses and after separation she suffered because she no longer had the benefit of Belsher's income. In terms of Belsher's income, she urges the court to impute \$6000 per year to Belsher's employment income on the basis that Belsher helped himself to a portion of the rental income for the Property and continues to do so. As such she submits that it should be included in Belsher's income and means.
- [126] Belsher's position is that Joanne is not entitled to spousal support on either ground. Belsher submits that Joanne's claim for compensatory support is based on her grossly exaggerating the assistance she provided to his mother and father and to the household. Belsher submits that he and Joanne are working full time and have similar incomes, with his current income being \$65,000 and hers being \$48,000. He opposes any rental income being imputed to him because the rental income properly belongs to Mandy and Jagdish, not him. Finally, Belsher submits that in considering Joanne's means and needs, the court should take into account that Joanne has not had to pay rent for two years from the date of separation April 2018 through November 2020 and for another 4.5 years from November 2020 to date has paid only \$500 per month for rent, which is less than fair market value rent.
- [127] Section 15.2 of the Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.) sets out the objectives and factors to consider in making an award of spousal support. Specifically:

Spousal Support Orders

15.2 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.

..

Factors

- (4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including
- (a) the length of time the spouses cohabited;
 - (b) the functions performed by each spouse during cohabitation; and

- (c) any order, agreement or arrangement relating to support of either spouse.

Spousal misconduct

- (5) In making an order under subsection (1) or an interim order under subsection (2), the court shall not take into consideration any misconduct of a spouse in relation to the marriage.

Objectives of spousal support order

- (6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should

- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;

..

- (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and

- (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[128] In *R.J.L. v. T.G.S.*, 2023 BCSC 3 at paras. 172-174, Madam Justice Norell summarizes the three legal grounds for spousal support:

[172] There are three bases upon which a spousal support award may be made: compensatory (economic advantage and/or disadvantage); non-compensatory (needs-based); and contractual: *Bracklow v. Bracklow*, 1999 CanLII 715 (SCC), [1999] 1 S.C.R. 420 at paras. 15, 49, 1999 CanLII 715. There is no contractual basis alleged here. In determining if there is entitlement to support, the Court begins with the objectives of spousal support. No objective is paramount and all must be considered: *Bracklow* at paras. 35-37; *Moge v. Moge*, [1992] 3 S.C.R. 813 at 850-852, 1992 CanLII 25.

[173] Compensatory support is intended to provide for an equitable sharing of the economic consequences of the relationship or its breakdown. Both economic advantage and disadvantage are considered. The longer the relationship, the greater the presumptive claim to an equal standard of living upon its breakdown: *Chutter v. Chutter*, 2008 BCCA 507 at paras. 50-52, leave to appeal to SCC ref'd, 33002 (28 May 2009); *Bracklow* at paras. 34, 39; *Moge* at 861-863, 870.

[174] Non-compensatory support is intended to provide needs-based support where compensatory principles do not apply. Its goal is to narrow the gap between the needs and means of spouses upon marital breakdown. Need is a relative concept, and goes beyond the basic necessities of life. It is informed by the circumstances of the parties, including the length of the relationship and the standards of living enjoyed during and after the relationship: *Chutter* at paras. 54-59; *Bracklow* at paras. 36, 41.

- [129] The parties were married for 14 years.
- [130] They are both in their late 40's now.
- [131] They have no children and are both employed full-time.
- [132] While Joanne worked part time during the first two-thirds of the relationship, she also went to school which increased her capacity to earn income. As indicated above, the evidence does not support that Joanne worked part time in order to look after Belsher's parents or the household. However, regardless of the purpose for working part time, the fact is that she worked part time for a significant portion of the parties' relationship and was reliant on Belsher's income during the relationship. On the other hand, Joanne has been working full time since 2013, some five years prior to the parties' separation and seven years after separation.
- [133] Belsher's current income is \$65,000 per year and has been for the past two years. From the date of separation until a couple years ago, Belsher's income ranged from \$46,000 to \$80,000. I am not prepared to impute additional income to Belsher for him keeping rental income that properly belongs to Mandy and Jagdish. The evidence does not support that Belsher regularly took rental income. Further, I do not believe that Mandy and Jagdish will permit Belsher any access to the rental income going forward. Belsher owes them considerable sums for helping him pay his legal fees. Mandy and Jagdish also sought and I have ordered that Belsher pay them occupational rent. Given what Belsher owes them, I do not find that they will let him keep any of the rental income from third party tenants going forward.
- [134] Joanne's current income is \$48,000 per year. Since separation, her income has ranged from \$38,000 to \$48,000 per year.
- [135] I am of the view that the only way that Joanne was able to meet her reasonable needs after separation, particularly when her income was lower was to dispose of the family property and use the proceeds. Her "reasonable" needs did not include staying in a three-bedroom suite at the Property or elsewhere, however. That was her choice. She could have gotten a smaller place or perhaps stayed with her parents in their 13,000 square foot home. As a result of her choice to stay at the Property, she will have to pay occupational rent. As such, I reject Belsher's argument that Joanne does not have a need for spousal support based on living rent free/practically rent free since separation.
- [136] I see no basis for compensatory support given the parties' roles in the marriage and given the parties' current incomes. However, I am of the view that Joanne is entitled to temporary, time-limited, needs based spousal support based on her needs post separation and her limited means, particularly when her income was lower at \$38,000.

- [137] I am of the view that a lump sum award is appropriate. In one of her various calculations, Joanne suggested a lump sum in the approximate amount of \$27,000 if the court imputes the additional \$6000 rental income to Belsher or \$20,000 if the court does not. Each of these calculations is based on spousal support of \$345 per month (mid range) for seven years duration (low end of range) under the Spousal Support Advisory Guidelines (SSAG's).
- [138] I have found the parties' incomes are \$65,000 (Belsher) and \$48,000 (Joanne). As mentioned, no additional rental income ought to be imputed to Belsher. Even though on occasion Belsher/Belsher and Joanne made use of the rental income, that was improper. Using \$65,000 for Belsher and \$48,000 for Joanne, the SSAG's produce a range of lump sums of approximately \$17,500-\$23,400 based on seven years of support for seven years. As indicated above, I find Joanne's needs are transitory only such that the low end of the range of quantum and duration are appropriate. As such, I order Belsher pay lump sum support of \$17,500 to Joanne, which amount shall be offset against the amount Joanne owes Belsher for his share of the property she disposed of. The amounts happen to be the same, so there is no actual money that will be paid by either Belsher or Joanne to the other. This is fair as Joanne needed Belsher's share of the family property/his personal property to assist her meet her reasonable financial needs. Belsher and Joanne now have similar incomes and means and their needs will be similar in that they each owe moneys to Mandy and Jagdish for rent since separation. As mentioned, Joanne could have reduced her liability at the date of separation if she had moved to a smaller place or moved in with her parents. However, she did not, so she now must pay occupational rent to Mandy and Jagdish. However, that is not the result of the marital breakdown.

Summary of Orders

- [139] Joanne's claims against the Property including but Joanne's claims in fraudulent conveyance, unjust enrichment, constructive trust and the FLA are dismissed.
- [140] Joanne shall pay Mandy and Jagdish occupational rent in the total amount of \$212,800 less the \$500 payments she has made pursuant to the order of Justice Blok (if she has made all of the \$500 payments, my calculation is that \$28,000 would be deducted).
- [141] Joanne will vacate the Property forthwith and in any event within 30 days and leave it in good condition.
- [142] Joanne's CPL against the Property is cancelled.
- [143] Joanne will forthwith remove her CPL filed against the Property.
- [144] Belsher shall pay Mandy and Jagdish occupational rent in the total amount of \$155,800 less the \$500 payments he has made pursuant to the order of Justice Blok (if he has made all of the \$500 payments, my calculation is that \$28,000 would be deducted).

- [145] Joanne shall forthwith pay the compensation payment of \$17,500 to Belsher in full and final satisfaction for his share of the family assets which payment is entirely off-set against the lump sum spousal support that Belsher owes Joanne.
- [146] Belsher shall forthwith pay Joanne a one-time lump sum spousal support payment of \$17,500 which payment is entirely offset against the compensation payment that Joanne owes Belsher. All other claims for spousal support made by Joanne against Belsher are dismissed.
- [147] Joanne shall forthwith and in any event within 30 days return through counsel any personal property she possesses that belongs to Belsher.
- [148] All other claims of the parties are dismissed except for costs.

Costs

- [149] Counsel did not make detailed submissions on costs. If counsel are unable to resolve the issues of costs, they may within 30 days of these reasons request a brief hearing before me. My preliminary view, subject to submissions, is that Joanne has been largely unsuccessful and should pay costs to the others at Scale B.

"Hamilton J."

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