

CANADA / JUDGMENT

Sandhu v. Gosal

2022 BCSC 1033

COURT

Supreme Court of British Columbia

DECIDED

20 June 2022

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2022 BCSC 1033 Sandhu v. Gosal

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sandhu v. Gosal,

2022 BCSC 1033

Date: 20220620

Docket: S224375

Registry: New Westminster

Between:

Dharmdeep Singh Sandhu

Plaintiff

And

Surjit Singh Gosal

Defendant

Corrected Judgment: The text of the judgment was corrected at paras. 72 and 85 on August 15, 2022.

Before: The Honourable Mr. Justice Jenkins

Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

R.S. Deol

K.S. Taunk

Counsel for the Defendant:

M.T. Boulet

Places and Dates of Trial/Hearing:

New Westminster, B.C.

October 25 to 29, 2021

Abbotsford, B.C.

February 3, 2022

Place and Date of Judgment:

New Westminster, B.C.

June 20, 2022

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- [1] This case revolves around a real estate development in Surrey, British Columbia, in which the defendant, Surjit Singh Gosal, was an original partner. The plaintiff, Dharmdeep Singh Sandhu, claims that in 2010 and 2012 he paid a total of \$575,000 to the defendant, on the understanding he was purchasing a one-third interest in the development which was to consist of several townhouses. The defendant acknowledges receipt of the funds from the plaintiff, however, the defence submits the payment was to be credited to the purchase of a lot in the proposed development.
- [2] In 2018, the plaintiff ultimately became the owner of one of the lots in what had become a subdivision, as opposed to a townhouse development.
- [3] The plaintiff testified that the various agreements he made with the defendant were all verbal. The defendant relies upon three forms of alleged written agreements which were prepared by the defendant, each of which have been vigorously challenged by Mr. Sandhu. Obviously, the credibility of the parties is a prime issue in this case.
- [4] Pursuant to an order made by my colleague, Justice Branch, at a Trial Management Conference on September 15, 2021, this trial related to liability only. Depending on my findings, the tracing of proceeds of sales and quantum will be the subject of a further trial.

THE PLAINTIFF

- [5] Mr. Sandhu is a professional taxi driver who moved to Canada from India in 1994. He testified through an interpreter, stating he spoke a "little bit" of English and that he could read and write a "little bit" of English. He has received no education since arriving in Canada.
- [6] Mr. Sandhu has lived in Surrey for many years, with his wife and children. In 1998, he came to know Mr. Gosal, a real estate agent who represented Mr. Sandhu when he purchased his first home. He retained Mr. Gosal on two other occasions, when he sold his home and purchased a new residence.
- [7] Mr. Sandhu submits that since approximately 2010, there was an element of trust or fiduciary between the parties, based upon the numerous prior dealings between them.
- [8] Mr. Gosal attended university and obtained a degree in agriculture but has been a realtor for many years. He is very experienced in the real estate business and has been active in the real estate market in the South Asian community in Surrey. He also testified to having sold a total of four houses for Mr. Sandhu over several years.

- [9] After hearing the testimony of both parties, it is apparent that Mr. Sandhu relied upon and trusted Mr. Gosal when dealing with real estate. The reliance placed on Mr. Gosal by Mr. Sandhu became apparent during the trial, especially considering Mr. Sandhu advanced \$575,000 to Mr. Gosal in 2010 and 2012, without receiving in turn any interest in land or security from Mr. Gosal.
- [10] The following is a summary of the relevant evidence in this case, specifically dealing with the alleged written agreements between the parties relating to a subdivision located at 14088 58A Ave. in Surrey ("58A Ave.").

FACTUAL SUMMARY

- [11] Mr. Sandhu testified that, in May 2010, Mr. Gosal asked Mr. Sandhu to advance him funds as a loan. Mr. Sandhu eventually did advance a total of \$225,000 with interest at 10% to Mr. Gosal, between May and September of 2010, to invest in a proposed townhouse development.
- [12] Mr. Sandhu's evidence was that there was no further agreement between the parties, other than a verbal agreement under which he loaned the \$225,000 to Mr. Gosal. He provided copies of the four bank drafts totalling \$225,000.
- [13] It is not in dispute that Mr. Sandhu did advance \$225,000 to Mr. Gosal in 2010, although Mr. Gosal denied that the money he received from Mr. Sandhu was a loan.
- [14] Mr. Gosal testified that, in 2006, he and two partners, Rupinder Singh Mangat and Mr. Gosal's brother-in-law Harvinder Singh Gill, purchased the land on 58A Ave. on which a rancher home had been built. He and his partners rented out the rancher for \$1,400 per month. He stated he had an agreement with his partners, where one of the partners collected the rent each month.
- [15] In the following paragraphs, I refer to what Mr. Gosal alleges are written agreements between him and Mr. Sandhu, allegedly entered into in 2010, 2012 and 2017. By referring to the written agreements of those years under headings referencing each agreement, I emphasize that Mr. Sandhu does not recall ever having executed those documents, but does acknowledge that the documents contain what appears to be his signature or initials. Alternatively, if he did sign the documents (or initialled the same), Mr. Sandhu says they were part of a large bundle of documents presented to him by Mr. Gosal in 2018, which Mr. Gosal never explained, and instead held up the corners of those documents for Mr. Sandhu to execute, without revealing the contents.

THE 2010 AGREEMENT

- [16] Mr. Gosal testified that in 2010, Mr. Sandhu approached Mr. Gosal to advise him that he, Mr. Sandhu, wanted to invest in real estate. Mr. Gosal instead recommended to Mr. Sandhu that he buy a house, a rancher, and rent out the house. He stated that Mr. Sandhu did not purchase a house at the time but insisted on investing in property, and wanted to be involved in future projects.
- [17] Mr. Gosal then testified that he agreed to sell one-half of his one-third interest in 58A Ave. for a price of \$330,000 and that the two men entered into an agreement to that effect dated July 2, 2010 (p. 25 of Ex. 8) ("2010 Agreement"). Mr. Sandhu denies ever executing the 2010 Agreement, saying he saw that agreement for the first time in his lawyer's office in connection with this litigation. It is not disputed that Mr. Gosal prepared the 2010 Agreement; however, what is in question is when it was prepared. Mr. Sandhu submits the agreement was likely prepared some time in 2016 or possibly later.
- [18] There is reason to believe on the evidence that the 2010 Agreement, parts of which were completed on a form of "Contract of Purchase and Sale" prepared by the Real Estate Board of Greater Vancouver, was prepared much later than 2010. Portions of the agreement in question that challenge its alleged date of preparation include:
- The date of the agreement at the top of page 1 was inserted in Mr. Gosal's handwriting as July 2, 2010, whereas at the bottom of the pages consisting of the Real Estate Board form indicate on page 3 that the form was issued by the Real Estate Board in 2016 whereas other pages of purportedly the same form show dates of 2000 and 2008.
 - Portions of the handwritten section of the addendum (p. 30 of Ex. 8) have been "whited out" and written over with handwriting indicating a payment price of \$261,000 plus a \$69,000 TD mortgage, the totals of which equate to the purchase price of \$330,000. None of those changes were initialed by the parties.
 - Although there are signatures of the parties on the documents, none of the signatures were witnessed.
 - Although the 2010 Agreement purports to evidence a sale by Mr. Gosal of one-half of one-third interest of 58A Ave., on a page (p. 28 of Ex. 8) consisting only of very confusing handwriting, there is a reference to 2.33 lots, and on p. 30 of Ex. 8 refers to "any number of lots after subdividing (Surjit Gosal's share)". The reference to 2.33 lots would indicate that each one-third interest in the planned development would get 2.33 lots if there were to be seven lots in the subdivision. This is significant because it was only after a subdivision plan was filed with Surrey in 2016 that the subdivision plan included seven lots.
 - The area for initials on p. 3, which is the page from the revised form of contract dated 2016, is not initialed in the same manner as other pages.

· At the top of page 1 of the form, (p. 25 of Ex. 8) there are the words "Page 1 of 8 pages", yet page 4 of the form is stated to be "Page 4 of 6 pages" (p. 29 of Ex. 8). This indicates that more than one issue of the document had been carelessly combined.

· Mr. Gosal retained an engineering firm in 2013 to prepare a subdivision plan, which was three years after the purported agreement of July 2, 2010.

[19] Mr. Gosal testified that "someone else" must have whited out portions of the agreement and his former lawyer must have mistakenly included a form document from 2016 at p. 3. In effect, he testified that the document had been changed by his former lawyer.

[20] Although portions of the 2010 Agreement refer to Mr. Gosal selling one-half of his one-third interest in 58A Ave., it is clear from all of the evidence that Mr. Gosal was actually intending to sell a one-third interest in the property which belonged to one of his partners from the initial 2006 purchase of 58A Ave.

[21] Attached to the 2010 Agreement was a document headed "Disclosure of Interest in Trade" issued by the Real Estate Counsel of British Columbia in which a realtor who has an ownership interest in the property must disclose that interest. That document again appears to have been signed by Mr. Gosal and Mr. Sandhu, not witnessed, with Mr. Sandhu's signature at an odd angle to the page. Exhibit 2 at trial, which was put to Mr. Gosal, was a document issued by the B.C. Financial Services Authority referring to disclosure of realtors who may "directly or indirectly acquire or dispose of real estate."

[22] Page 2 of Exhibit 2 includes the following words:

When making this disclosure, you must use the Disclosure of Interest in Trade form required by BCFSa.

This form must be signed by your managing broker.

[23] The document was not signed by Mr. Gosal's managing broker. Mr. Gosal's unsatisfactory response under cross-examination was that it was "good enough to give it to the buyer, I was a seller, not a realtor".

[24] I also note that on cross-examination Mr. Gosal admitted that the funds given to him by Mr. Sandhu in 2010 were partially used by Mr. Gosal to purchase property in Coquitlam to which Mr. Sandhu had no connection.

THE 2012 AGREEMENT

[25] Next, Mr. Sandhu testified that two years after lending \$225,000 to Mr. Gosal, he asked Mr. Gosal to pay back that money plus interest. He stated that Mr. Gosal then told him, i.e. Mr. Sandhu, if he wanted to invest in real estate, "I have a good property for you" and took Mr. Sandhu to see a property on 58A Avenue in Surrey. Presumably, this is the property referred to in the 2010 Agreement.

- [26] Mr. Sandhu testified that while at the property Mr. Gosal told him there were three partners but one partner wanted out of his investment and "we will include you in his place". He also stated Mr. Gosal told him townhouses would be built on the property. Mr. Sandhu asked "how many" and he was advised that Mr. Gosal would only know how many townhouses after making application to the City of Surrey. Mr. Gosal told him there would be significant profits from an investment.
- [27] Continuing, Mr. Sandhu stated he discussed the possible investment with his wife and took her to see the property, where his wife mentioned the property was a "jungle" and discouraged an investment by Mr. Sandhu. Mr. Sandhu convinced his wife to see Mr. Gosal and asked how much Mr. Gosal wanted him to invest. Mr. Gosal performed some calculations and was quoted as saying "if you want to share in it according to market prices, your investment will be \$450,000". Mr. Sandhu then testified that in that case "I will have to pay \$450,000 to purchase one-third from the person going out, one-third of the whole property".
- [28] Mr. Sandhu then stated that he told Mr. Gosal "I don't have that much, all I have is what I have given you", to which Mr. Gosal replied that Mr. Sandhu should sell his taxi, which Mr. Sandhu's wife discouraged. Mr. Sandhu understood that if he paid \$450,000 to purchase the one-third interest, he would receive a one-third interest of 58A Ave. Mr. Sandhu further stated that Mr. Gosal told him he would be able to buy the taxi back at a later date with the profits from the property, saying "you will make lots and lots of hundreds of thousands", which caused Mr. Sandhu to change his mind.
- [29] Mr. Sandhu then sold a one-half interest in his taxi in September 2012, and from the proceeds obtained a \$350,000 bank draft which he gave to Mr. Gosal (p. 81 of Ex. 8), on a verbal agreement that:
- a) the 10% interest accruing on the previous advance of \$225,000 in the 2010 Agreement would stop accruing interest after Mr. Gosal transferred a one-third interest in the 58A Ave. property to Mr. Sandhu;
 - b) Mr. Gosal would keep and maintain the accounts and expenses of the development and subdivision of the 58A Ave. property;
 - c) Mr. Sandhu would reimburse Mr. Gosal for Mr. Sandhu's share of the costs after the 58A Ave. property had been subdivided; and
 - d) Mr. Sandhu would receive a one-third interest in the property on 58A Ave.
- [30] After paying the \$350,000 to Mr. Gosal, Mr. Sandhu was asked by Mr. Gosal to collect rent from the tenant of the rancher house on the property, and to deposit the rent funds in a TD account to apply to a mortgage against the property. Mr. Sandhu testified that he continued to collect the rent until the rancher home was demolished in 2016 and deposited those funds in the TD account, which was a task assigned to Mr. Sandhu after, he submits, he took over the partnership position of Mr. Mangat. Receipts for the rental maintained by Mr. Sandhu

were in evidence at pp. 430-506A of Exhibit "8". Under cross-examination, Mr. Gosal agreed that Mr. Sandhu had been collecting rent from the tenant.

[31] Mr. Gosal denied the verbal agreement claimed by Mr. Sandhu and testified that an agreement in writing entered into on September 2, 2012, was the "2012 Agreement" (pp. 63-80 of Ex. 8). That document appears to be a custom agreement headed "Contract of Purchase and Sale", which purports to be an agreement on the part of Mr. Sandhu to purchase the proposed Lot 7 of the lands at 58A Ave. for a price of \$350,000 and to pay the construction cost to develop the lot.

[32] Once again, Mr. Sandhu has denied the 2012 Agreement was ever executed by him but, if it was, he was not aware of what he was signing and it was not signed in 2012. Evidence that the 2012 Agreement may not have been executed in 2012 includes:

- Neither the signatures of Mr. Sandhu or Mr. Gosal have been witnessed.
- At page 5 of 17, an addendum to the Contract of Purchase and Sale includes a line where the name of the seller was crossed out and nearby are the initials of Mr. Gosal. Unfortunately for Mr. Gosal, the crossed out seller name appears to be Harvinder Singh Gill, while if the page is read as it originally was printed, shows Mr. Gosal and Mr. Gill as sellers and "2012" as buyer. It would appear as though the form of contract used in this case was a modification of a contract used when Mr. Gosal and Mr. Gill originally purchased the 58A Ave. property.
- Completion, possession and adjustment dates in the addendum were all June 30, 2014 for "proposed Lot 7". However, Lot 7 did not exist on a subdivision plan until 2015 when a plan was submitted to the City of Surrey. Page 6 of 17 of the addendum referred to a different completion date.
- During cross-examination, Mr. Gosal was referred to clause 16(a) of the addendum which included acknowledgments of the buyer (in this case, Mr. Sandhu) including:
 - (a) that it [the buyer] has received and read a copy of the City of Surrey Erosion and Settlement Control Information Package, and

Mr. Gosal acknowledged Mr. Sandhu had not seen the Erosion and Settlement Control Information Package, as he had not paid his deposit. However, Mr. Sandhu had by that time paid a total of \$575,000 to Mr. Gosal, and as Lot 7 did not exist in 2012, the Package could not have been registered against title and likely did not exist.

- On cross-examination, Mr. Gosal testified that the 2012 Agreement was signed by Mr. Sandhu at Mr. Sandhu's residence in the presence of Ms. Sandhu; however, there is no witness signature. If Ms. Sandhu was present as stated by Mr. Gosal and the document was executed by Mr. Sandhu, it would be very likely that the witness could have signed the document. Mr. Sandhu denies having knowingly signed the document.

- [33] I mentioned previously that Mr. Gosal had purchased 58A Ave. in 2006 with his partners, Mr. Gill and Mr. Mangat.
- [34] Mr. Mangat testified at the trial for the plaintiff. He has known Mr. Gosal for many years, worked as a framer building houses for Mr. Gosal, and retained Mr. Gosal as a realtor on previous occasions.
- [35] Mr. Mangat understood from Mr. Gosal that 58A Ave. would hopefully be developed as a townhouse project on which the partners could make a good return. He testified that there were delays, as there were no city services at the property (such as water and sewer) and the townhouses could not be built until the city services were available.
- [36] In or about 2012, Mr. Mangat was approached by Mr. Gosal who suggested Mr. Mangat either keep his interest in the property or sell his one-third interest to Mr. Gosal. He was concerned about Mr. Gosal and retained a lawyer to represent him for the sale of his interest to Mr. Gosal. There were several meetings between Mr. Gosal and Mr. Mangat, and a sale of Mr. Mangat's interest in 58A Ave. was completed in October 2014 through their respective lawyers. Mr. Mangat received approximately \$385,000 from the sale.
- [37] A letter dated October 18, 2013 (p. 92 of Ex. 8), purportedly from Mr. Gosal and Mr. Gill to Mr. Mangat, was placed before Mr. Mangat during his testimony. That letter, drafted by Mr. Gosal, was very critical of Mr. Mangat, alleging he had not been cooperating, had not paid his portion of the costs of maintaining the property, and proposed a buyout. Under oath, Mr. Mangat denied ever having received that letter, and stated "the letter is a lie".
- [38] Mr. Mangat also testified that he had not been made aware that in 2010 Mr. Gosal had purported to sell Mr. Mangat's share in the property to Mr. Sandhu. He also stated he had not authorized Mr. Gosal to sell Lot 7, were it in existence, to anyone. Mr. Mangat's testimony in this regard was completely contrary to and is more likely accurate than that of Mr. Gosal.
- [39] An agreement dated October 21, 2014, between Mr. Gosal and Mr. Gill, described the purchase by Mr. Gosal of Mr. Mangat's interest in 58A Ave., and that Mr. Gosal would then be owner of two-thirds of the property.
- [40] Mr. Sandhu testified that, in 2016, he was told by Mr. Gosal that townhouses would not be built on the property and that only subdivided lots would be feasible. He stated that in 2016 he was told by Mr. Gosal that each of the three partners would keep one lot of the seven contemplated for the property and the remaining lots would be sold.
- [41] Having advanced \$575,000 to Mr. Gosal in 2010 and 2012, Mr. Sandhu still had not received any documentation that he was an owner of the development and was rightly concerned that he had nothing to show for his investment.

- [42] Mr. Sandhu continued in his direct evidence that he understood he would be receiving "Lot 7, 5801 140A Place". He continued and stated "this lot is the part of my one-third share, 2.33 lots were his share".

THE 2017 AGREEMENT (THE CONSTRUCTION CONTRACT)

- [43] The alleged 2017 agreement is entitled "Construction Contract - 28 April 2017" (p. 276 of Ex. 8) (the "Construction Contract"). This document was prepared by Mr. Gosal who testified it was executed on April 28, 2017.
- [44] Mr. Sandhu testified the document was prepared by Mr. Gosal at some point in 2018. He acknowledges that it could be his signature on the document but he cannot recall signing the same.
- [45] The Construction Contract called for Mr. Gosal to borrow \$825,000 from the mortgagee, Vancity, to cover the cost of construction of the house to be built on Lot 7. The Construction Contract referred to the "present market value around \$825,000" to be repaid, however, the assessed value for the land was \$825,000 as of July 2017, three months after the contract was allegedly signed. On that basis, Mr. Sandhu submits the Construction Contract was executed in 2018, which is when construction of the house began and funds were being advanced by Vancity. This is more likely, as the Vancity mortgage commitment was issued February 22, 2018.
- [46] Mr. Gosal testified that he borrowed the funds as Mr. Sandhu had not been able to get mortgage financing. The Construction Contract contemplated \$825,000 was to be paid by Mr. Sandhu to Mr. Gosal from funds from the sale of Mr. Sandhu's home on 150A Ave. in Surrey. Also, Mr. Gosal did not mention in the Construction Contract that Mr. Sandhu had previously advanced to Mr. Gosal a total of \$575,000 with no security which, according to Mr. Sandhu, was to be his investment as a one-third partner in the subdivision.
- [47] Shivraj Bains was a witness for Mr. Sandhu at trial. Mr. Bains is also a taxi driver and realtor who had known both parties for several years. He testified that Mr. Sandhu had told him in 2012 he was selling an interest in his taxi. When Mr. Bains asked why, Mr. Sandhu told him that he had an opportunity to invest in property so he was raising money. Mr. Bains understood from Mr. Sandhu that he was to be a one-third partner in a townhouse development in Surrey.
- [48] Mr. Bains testified that later, in 2018, Mr. Sandhu had told him the three owners had decided to keep one lot each in what had become a subdivision. In April 2018, Mr. Sandhu told him that he (Mr. Sandhu) would be receiving Lot 7.
- [49] Mr. Bains continued in his evidence and stated that later in September 2018 told to Mr. Sandhu he had learned that Lot 7 was available for sale and asked Mr. Sandhu if he, Mr. Sandhu, was selling his home, i.e. Lot 7. He said Mr. Sandhu was very surprised and learned that the property was not in Mr. Sandhu's name. He told Mr. Sandhu that as Mr. Sandhu had

put money into the home and had nothing to show for it, "maybe he should move into the home". Mr. Sandhu testified that in mid-September 2018 he came to believe that Mr. Gosal was hiding a document from him, he was scared, "under pressure Bains told me to get the property in my name, we were helpless, we had put our signatures ". Mr. Bain's testimony is consistent with that of Mr. Sandhu and resulted in Mr. Sandhu taking possession of the house on Lot 7.

- [50] Mr. Sandhu testified that he became concerned in or about May 2018 that Lot 7 had been listed for sale, which was a month after he had listed his house on 150A Ave. for sale, thereafter on September 20, 2018 forcibly moving his children into the new house on Lot 7.

THE 2018 CONTRACT OF PURCHASE AND SALE - MR. GOSAL TO MR. SANDHU

- [51] The next document in issue is the Contract of Purchase and Sale dated September 6, 2018 (p. 371 of Ex. 8). The purchase price of Lot 7 on completion in October 2018 was \$1,400,000 consisting of the \$575,000 already paid plus \$825,000 as the cost of construction. Mr. Sandhu testified that he first saw this document in his lawyer's office after this action was commenced; and respecting what appears to be his signature, he testified he was not certain it was his signature. As is the case with the previous documents, there is no signature indicating there was a witness to the execution by either party.
- [52] Ultimately, the conveyance of Lot 7 to Mr. Sandhu did close on October 3, 2018.
- [53] The Vancity mortgage was paid and discharged in October 2018, upon the sale of Mr. Sandhu's previous residence on 150A Ave. in Surrey.
- [54] I should also note that each of Mr. Gosal, Mr. Sandhu and Mr. Gill (or their spouses) now own a residence in this small subdivision.

SUMMARY OF FACTUAL FINDINGS

- [55] Based upon all of the evidence, some of which has been produced above, I find that the written agreements, all allegedly prepared by Mr. Gosal in 2010, 2012 and 2017 referred to above were in fact all prepared by Mr. Gosal at some point in time in 2018.
- [56] Those documents were internally inconsistent, referring to the use of page numbers from different Real Estate Board documents obviously prepared later in time in 2018, all of which were fabricated by Mr. Gosal to attempt to support his position that Mr. Sandhu was nothing more than a proposed purchaser of a lot in the subdivision.
- [57] Of considerable weight is the back of page 3 of the 2010 Agreement which is entirely in Mr. Gosal's handwriting and includes reference to "2.33 lots". That mention of "2.33 lots" could only refer to three partners each sharing in seven lots as 2.33 is one-third of seven. It was not until 2016 that it became known that there would be only seven lots in the subdivision. I have pointed out previously in these reasons the several inconsistencies in the 2010 Agreement, all of which support the assumption it was not in existence in 2010, and I will

not repeat all of the same here.

- [58] In a similar vein, in the 2012 Agreement, the printed portion referred to a date in July of 2015 whereas the handwritten portion (written by Mr. Gosal) stated "12 Sept" 2012. This suggests to me, convincingly, that the document was prepared in 2015 or later, likely in 2018.
- [59] Reviewing all of the documents which purport to include the signature or initials of Mr. Sandhu, if he did sign the same, in each case his signature would have to have been affixed much later than the stated dates of the documents. In some cases, he denied it was his signature or initials; and in many cases, he stated it did look like his signature.
- [60] Considering that the documents were written up or prepared by Mr. Gosal well after the stated dates, Mr. Sandhu's explanation of the time in September 2018 when Mr. Gosal came to him with a pile of documents for signature, most of which were signed or initialed by him while Mr. Gosal was flipping and partially exposing pages, gains credence. Even if he did sign portions of those documents, Mr. Sandhu in the circumstances clearly did not understand what he may have been signing.
- [61] The lack of any witnessed signatures on any of the documents, often Real Estate Board standard forms requiring witnesses, and with Mr. Gosal's status as an experienced real estate salesperson, is indicative that those documents were not signed by Mr. Sandhu on the respective dates.
- [62] Mr. Sandhu spoke very poor English, understood little English writing, trusted Mr. Gosal based upon Mr. Gosal acting on the purchase and sale of previous properties, and relied upon Mr. Gosal's credentials as a licensed real estate agent. Mr. Sandhu gave Mr. Gosal \$575,000 and understood Mr. Gosal was to invest the money in real estate as his partner in a development. As a result, I doubt very much that Mr. Sandhu realized what he was signing, going back to 2010, was an agreement for the purchase and sale of a lot which was not even in existence when most of the documents were signed.
- [63] Mr. Sandhu also testified that he had become concerned in 2017 or 2018 that he had received nothing in exchange for the \$575,000 and began to ask for a lot to be conveyed to him, so that he could at least possess some property.
- [64] Mr. Gosal's wife, Varinder Gosal, also testified for the defence; however, her testimony was not of assistance.
- [65] Mr. Gosal has submitted that I should draw an adverse interest due to Ms. Sandhu not testifying at trial; however, I have not drawn an adverse interest as there was sufficient evidence before this Court to allow me to come to the decision I have.

[66] I conclude that the only reasonable explanation for what occurred between Mr. Sandhu and Mr. Gosal, commencing in 2010 to the date when Lot 7 was eventually transferred to Mr. Sandhu, was as testified to by Mr. Sandhu. After a review of all of the documentation between the parties, I find Mr. Sandhu invested in an equal partnership between him, Mr. Gosal and Mr. Gill to develop, build, and sell the subdivision which was created from the 58A Ave. property.

THE PLAINTIFF'S CLAIMS

Claim for Judgment in Debt

- [67] Firstly, Mr. Sandhu claims a judgment against Mr. Gosal for \$125,000 plus interest at 10%, being the amount remaining due after the advance of \$225,000 as a loan less \$100,000 which was to be used as a deposit on the investment of Mr. Sandhu in the property.
- [68] In his response to civil claim, Mr. Gosal claims that the advance of \$225,000 was not a loan but a deposit as part of a contract for Mr. Sandhu to purchase one-half of the defendant's one-third interest in the property, the purchase price of which was \$330,000 (what Mr. Gosal referred to as the "Original Contract"). I have found this contract did not exist in 2010.
- [69] Mr. Gosal further claims Mr. Sandhu was unable to pay the additional \$105,000 of the purchase price and that as a result, the parties mutually agreed to terminate the contract for the purchase of an interest in the property.
- [70] The terms under which the \$225,000 was advanced to Mr. Gosal were not put in writing.
- [71] Considering that when these funds were advanced in 2010, no preliminary drawings or agreements or applications to build a townhouse project or a subdivision had been started, it is unlikely Mr. Sandhu would be placing such a substantial deposit on a non-existing lot.
- [72] Accordingly, Mr. Sandhu is entitled to judgment in the amount of \$125,000 which is that portion of the \$225,000 advance remaining after applying \$100,000 to payment for one-half of the two-thirds interest Mr. Gosal held in the 58A Ave. property. As well, Mr. Sandhu is entitled to interest at 10% per annum on the judgment of \$125,000.

Constructive Trust/Unjust Enrichment

- [73] Mr. Sandhu asserts entitlement to a constructive trust over the 58A Ave. property based upon the wrongful conduct of Mr. Gosal which has resulted in Mr. Gosal and Mr. Gill being unjustly enriched.
- [74] Counsel has referred me to the decision of 073431 B.C. Ltd. v. Panorama Parkview Homes Ltd., 2021 BCSC 607 [Panorama] commencing at paras. 481-483 and 486:

[481] The leading case on the circumstances necessary to impose a remedial constructive trust for wrongful conduct is *Soulos v. Korkontzilas*, [1997] 2 S.C.R. 217. In *Re Redstone Investment Corp.* 2015 ONSC 533, Justice Morawetz, as he then was, summarized the test set out in *Soulos*:

68 The test for finding a constructive trust based on wrongful conduct was set out by the Supreme Court of Canada in *Soulos v. Korkontzilas*. The following criteria is to be considered in determining the availability of the remedial constructive trust:

1. The defendant must have been under an equitable obligation, that is, an obligation of the type that courts of equity have enforced, in relation to the activities giving rise to the assets in his hands;
2. The assets in the hands of the defendant must be shown to have resulted from deemed or actual agency activities of the defendant in breach of his equitable obligation to the plaintiff;
3. The plaintiff must show a legitimate reason for seeking a proprietary remedy, either personal or related to the need to ensure that others like the defendant remain faithful to their duties; and
4. There must be no factors which would render imposition of a constructive trust unjust in all the circumstances of the case; e.g. the interests of intervening creditors must be protected.

[482] I adopt this analysis of *Soulos*. However, subsequent to *Redstone*, the Supreme Court has held that the equitable obligation referred to in the preceding passage need not be of a fiduciary nature, and that a breach of any obligation that a Court would enforce may be sufficient: *Moore v. Sweet*, 2018 SCC 52.

[483] A constructive trust may also be imposed against a party pursuant to the equitable doctrine of unjust enrichment if, as per *Garland v. Consumers' Gas Co.*, 2004 SCC 25 at para. 30, there exists:

1. An enrichment of that party;
2. A corresponding deprivation of the plaintiff; and
3. An absence of a juristic reason for the enrichment.

[486] On the facts I have found *Jaswant* and *Parmjit* could not in good conscience have retained the benefit of *Rajpreet's* and *Mr. Mattu's* investments without ensuring that they participated in the Project. The good conscience basis for imposing a constructive trust was expressly approved in *Soulos*:

29 Good conscience as the unifying concept underlying constructive trust has attracted the support of many jurists. Edmund Davies L.J. suggested that the concept of a "want of probity" in the person upon whom the constructive trust is imposed provides "a useful touchstone in considering circumstances said to give rise to constructive trusts": *Carl Zeiss Stiftung v. Herbert Smith & Co. (No. 2)*, [1969] 2 Ch. 276 (C.A.), at p. 301. Cardozo J. similarly endorsed the unifying theme of good conscience in *Beatty v. Guggenheim Exploration Co.*, 122 N.E. 378 (1919), at p. 380:

A constructive trust is the formula through which the conscience of equity finds expression.

When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee.

- [75] The question that must be answered is did the wrongful conduct of Mr. Gosal give rise to an unjust enrichment of the defendant and so allow for imposition of a constructive trust?
- [76] The first three criteria set out in *Soulos v. Korkontzilas*, [1997] 2 S.C.R. 217, have, in my opinion, been satisfied. Mr. Gosal was under an equitable obligation to invest Mr. Sandhu's funds in the investment which gave rise to Mr. Sandhu advancing the funds, i.e. as a one-third partner in the development of 58A Ave. The funds advanced and invested in the development were used by Mr. Gosal in breach of the equitable obligation and Mr. Sandhu has, as a result, a legitimate reason for seeking the remedy sought.
- [77] I also note that the fourth criteria established in *Soulos* does not apply to the case at hand, as there are no factors which would render the constructive trust unjust such as intervening creditors. The third partner in the development, Mr. Gill, is not affected by the finding of a constructive trust as the claim and remedy is only as against one-half of Mr. Gosal's two-third's interest.
- [78] I also refer to paras. 491-492 of *Panorama*; it is not necessary to find a fiduciary duty owed to Mr. Sandhu in that there was a contractual obligation on Mr. Gosal to invest the funds from Mr. Sandhu as agreed between them. A contractual agreement can also give rise to a constructive trust.

Unconscionability

- [79] Mr. Sandhu submits that it would be unconscionable to enforce any of the alleged written agreements between him and Mr. Gosal, should those agreements be found to be binding on Mr. Sandhu, and I agree. In *Uber Technologies Inc. v. Heller*, 2020 SCC 16 at para. 155 the Court reviewed unconscionability as an independent doctrine:
- [155] A leading statement of the unconscionability doctrine appears in *Morrison v. Coast Finance Ltd.* (1965), 55 D.L.R. (2d) 710 (B.C.C.A.), where Davey J.A. remarked at p. 713:

[A] plea that a bargain is unconscionable invokes relief against an unfair advantage gained by an unconscientious use of power by a stronger party against a weaker. On such a claim the material ingredients are proof of inequality in the position of the parties arising out of the ignorance, need or distress of the weaker, which left him in the power of the stronger, and proof of substantial

unfairness of the bargain obtained by the stronger. On proof of those circumstances, it creates a presumption of fraud which the stronger must repel by proving that the bargain was fair, just and reasonable or perhaps by showing that no advantage was taken.

- [80] In 2010, the Court of Appeal set out the necessary elements to prove a claim of unconscionability in *McNeill v. Vandenberg*, 2010 BCCA 583 and *Roy v. 1216393 Ontario Inc.*, 2011 BCCA 500. In *McNeill*, Justice Garson stated:
- [15] In order to set aside a bargain for unconscionability, a party must establish:
- (a) inequality in the position of the parties arising from the ignorance, need or distress of the weaker, which left him in the power of the stronger; and
 - (b) proof of substantial unfairness in the bargain.
- [81] Considering the necessary elements, I referred to the inequality in the positions of Mr. Sandhu and Mr. Gosal previously in these reasons.
- [82] Respecting proof of substantial unfairness, the likely profits of a one-third interest in the subdivision would clearly be considerably greater than Mr. Sandhu's position at the time Lot 7 was conveyed to him in which he had merely preserved his prior advances to Mr. Gosal. Under the agreement made between the parties, Mr. Sandhu was entitled to a one-third interest in the development, i.e. the profit from 2.33 lots in the subdivision.
- [83] Based upon all of the evidence, I am satisfied that Mr. Sandhu has proven the necessary elements of unconscionability. What remains to be decided, following these reasons, is the quantum of damages or loss to which Mr. Sandhu is entitled, which, if not resolved, will be the subject of a further trial on quantum.
- [84] The evidence discloses a relationship of great trust placed in Mr. Gosal by Mr. Sandhu, based upon: Mr. Gosal previously acting as Mr. Sandhu's realtor; Mr. Gosal's extensive and lengthy experience as a real estate agent; Mr. Gosal's representations to Mr. Sandhu regarding potential returns should Mr. Sandhu invest in the development; and Mr. Gosal's difficulties in reading and writing English. Most importantly, Mr. Sandhu expressed the faith and trust he had in Mr. Gosal by handing over \$575,000 based upon the bargain of Mr. Gosal. Mr. Gosal completely failed in his duties to Mr. Sandhu.

SUMMARY

- [85] In conclusion, Mr. Sandhu is entitled to judgment in the amount of \$125,000 which is the amount remaining from his initial advance, as well as interest at 10% per annum on this amount. Mr. Sandhu has established a constructive trust against one-half of Mr. Gosal's two-third's interest in 14088 58A Ave., Surrey, B.C. Further, Mr. Sandhu has established that it would be unconscionable to enforce any of the alleged written agreements between him and Mr. Gosal.

COSTS

[86] Mr. Sandhu has been the successful party in this bifurcated trial, however, as there will need to be a further trial on the issue of damages, costs of this action should be adjudicated by the judge who hears the trial on damages.

"Jenkins J."

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