

CANADA / JUDGMENT

Schnurr v. Baldwin

2020 BCSC 501

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 501 Schnurr v. Baldwin

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Schnurr v. Baldwin,

2020 BCSC 501

Date: 20200403

Docket: S32903

Registry: Chilliwack

Between:

Christine Mary Schnurr

Plaintiff

And

Vicki Lee Baldwin

Defendant

Corrected Judgment: The text of the judgment was corrected at paragraphs 54, 56, 94 and 185 on April 17, 2020.

Before: The Honourable Madam Justice Norell

Reasons for Judgment

The Plaintiff, appearing in person:

C. Schnurr

Counsel for Defendant:

P. Evans

Place and Dates of Trial:

Chilliwack, B.C.

April 29-30, May 1, and

October 1-4, 2019

New Westminster, B.C.

October 7-10, 18, 21, and

December 10-11, 2019

Place and Date of Judgment:

Chilliwack, B.C.

April 3, 2020

Contents

Introduction.. 3

Issues.. 3

Credibility of witnesses.. 4

Parol Evidence.. 5

Background.. 6

April 2012 to September 2015. 7

Findings of fact 15

September 2015 to May 2017. 18

Findings of fact 37

May 2017 to January 2018. 41

Ms. Nygard and Mr. Girard tenancy. 42

Disruption of internet and electricity. 43

Residential Tenancy Branch proceedings. 43

Mr. Escola's use of the Property. 44

Application for conduct of sale and injunction. 44

Disposal of Ms. Schnurr's personal property. 45

Sale of the Property and Mr. William Ray's evidence. 47

Findings of fact 49

Did Ms. Baldwin hold title to the Property pursuant to an express or resulting trust?.. 50

Express trust 51

Resulting trust 53

Has Ms. Baldwin been unjustly enriched?.. 57

Did Ms. Baldwin unlawfully dispose of Ms. Schnurr's belongings? 58

Did Ms. Schnurr trespass on the Property and convert rental income? 60

Orders.. 60

Introduction

- [1] The plaintiff Ms. Schnurr and the defendant Ms. Baldwin, who are now both in their fifties, grew up on the same street. Until the events of this lawsuit they were life-long friends.
- [2] In November 2012, Ms. Schnurr bought a property on Chilliwack Lake Road, Chilliwack, B.C. ("the Property"). The Property is approximately five acres. In 2009, a landslide occurred on the Property and the log house on the Property was damaged. As a result, Ms. Schnurr was able to purchase the Property at a much reduced price, and instantly gained some equity in the Property. Ms. Schnurr had limited income, was forced to finance with private lenders rather than conventional banks, and was living off the equity, which was quickly eroding. Ms. Baldwin had significant personal debt, a modest income which could not service her debt, but a credit rating that was better than that of Ms. Schnurr. Both parties were willing to be less than truthful to prospective lenders and others to obtain financing to suit their purposes.
- [3] What followed were the events of this lawsuit and a breakdown of the parties' friendship. Those events, over the course of six years, culminated in the Property being registered in the name of Ms. Baldwin, and her being given conduct of sale of the Property by court order in August 2017. The Property was sold in January 2018, and the net proceeds from the sale of the Property, approximately \$85,000, are being held in the trust account of counsel for Ms. Baldwin. This trial, which was set for three days, but which ultimately took 15 days over the course of eight months, is primarily a dispute over the funds held in trust. There is also a claim regarding disposal of Ms. Schnurr's personal belongings, and a counterclaim for trespass and receipt of rental income.

Issues

- [4] The issues are:

- a) Did Ms. Baldwin hold title to the Property pursuant to an express or resulting trust?
- b) In the alternative, has Ms. Baldwin been unjustly enriched?
- c) Did Ms. Baldwin unlawfully dispose of Ms. Schnurr's belongings?
- d) Did Ms. Schnurr trespass on the Property and convert rental income?
- e) If the answer to any of the above is yes, what is the appropriate remedy?

Credibility of witnesses

- [5] Credibility of the parties was a key issue in these proceedings. In assessing the credibility of all the witnesses' evidence, I have followed the principles and approach in *Bradshaw v. Stenner*, 2010 BCSC 1398 [Bradshaw (S.C.)]; *aff'd* 2012 BCCA 296 [Bradshaw (C.A.)]:
- [186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Farnya v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) [Farnya]; *R. v. S.(R.D.)*, [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Farnya* at para. 356).
- [187] It has been suggested that a methodology to adopt is to first consider the testimony of a witness on a 'stand alone' basis, followed by an analysis of whether the witness' story is inherently believable. Then, if the witness testimony has survived relatively intact, the testimony should be evaluated based upon the consistency with other witnesses and with documentary evidence. The testimony of non-party, disinterested witnesses may provide a reliable yardstick for comparison. Finally, the court should determine which version of events is the most consistent with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions" (*Overseas Investments (1986) Ltd. v. Cornwall Developments Ltd.* (1993), 12 Alta. L.R. (3d) 298 at para. 13 (Alta. Q.B.)). I have found this approach useful.

- [6] Ms. Schnurr and Ms. Baldwin were the main witnesses at trial. Their evidence on all significant points is conflicting. The credibility of both parties suffered because they misrepresented facts to others and created false documents to get financing. Fortunately, there are three years of nearly 100 pages of contemporaneous text messages between the parties which help illuminate what was taking place.
- [7] As to the arrangements between themselves, where their evidence conflicts, for the most part I accept Ms. Schnurr's evidence over that of Ms. Baldwin. The main reasons for this are: Ms. Baldwin's evidence is in general not consistent with the contemporaneous communications between the parties, whereas Ms. Schnurr's evidence is; Ms. Baldwin's position that Ms. Schnurr gave her a one-half interest in the Property for \$10,000 is highly improbable on a common sense assessment; Ms. Baldwin's evidence that she had an ownership interest in the Property up to June of 2016 is not consistent with her actions; the vagueness of Ms. Baldwin's evidence regarding the agreements between the parties; and her approach of not directly answering some questions when cross-examined. Ms. Schnurr's evidence was also problematic; for example, she forged a signature and swore a statutory declaration that is contrary to her position in this lawsuit. However, in general, the difficulties with Ms. Baldwin's evidence undermined her evidence as to the terms of the agreements between the parties, whereas the difficulties with Ms. Schnurr's evidence reflected the deception in which both parties participated. I will discuss credibility in more detail as I review the parties' evidence.

Parol Evidence

- [8] The alleged agreements between the parties changed over time. Although the alleged agreements were verbal, there are some written contractual documents between the parties, in particular a November 23, 2012 loan agreement, a January 28, 2016 purchase and sale agreement, and two Form A transfers of interests in the Property. Neither party suggested that the written documents evidenced the complete agreements, nor did the parties raise any objection based on the parol evidence rule. That rule and a non-exhaustive list of its exceptions was explained in *Gallen v. Allstate Grain Co.* (1984), 9 D.L.R. (4th) 496 at 506-7, 53 B.C.L.R. 38 (C.A.):

The [parol] rule of evidence may be stated in this way: Subject to certain exceptions, when the parties to an agreement have apparently set down all its terms in a document, extrinsic evidence is not admissible to add to, subtract from, vary or contradict those terms.

So the rule does not extend to cases where the document may not embody all the terms of the agreement. And even in cases where the document seems to embody all the terms of the agreement, there is a myriad of exceptions to the rule.

- [9] In this case, to the extent it could be argued a document embodied all of the terms of an agreement, extrinsic evidence came within exceptions and was admissible: to support a claim for an equitable remedy, being the claim of a trust (Bradshaw (S.C.) at para. 9; aff'd (C.A.) at paras. 123-157); and to show the documents were not intended to be the entire agreement between the parties (Bradshaw (S.C.) at para. 12).

Background

- [10] Ms. Schnurr and Ms. Baldwin were childhood friends. Ms. Schnurr described Ms. Baldwin affectionately as the "little sister I didn't want". They shared life events such as marriages, the birth of children, and divorce. Ms. Schnurr said she "implicitly trusted" Ms. Baldwin. Over the years they lent each other small amounts of money in the hundreds of dollars. They never required proof of the loans. Ms. Baldwin said that in 2012 they were friendly and still knew each other as friends.
- [11] In 2007, Ms. Schnurr was involved in a car accident. She had been a registered psychiatric nurse, and just prior to the accident had returned to school and graduated as a registered nurse. She said the accident had an effect on her cognitive function and mood. She was diagnosed with depression. Ms. Schnurr commenced a civil action for personal injuries suffered in the accident. That action went to trial in 2015 and in September of that year judgment was given. Ms. Baldwin testified at that trial as one of Ms. Schnurr's witnesses.
- [12] At the time of the events of this lawsuit, Ms. Baldwin was working as a special education assistant with a school district, and part-time as a tutor. She had been working for the school district for many years.

April 2012 to September 2015

- [13] In early April 2012, Ms. Schnurr noticed the Property for sale. Ms. Schnurr testified there had been a landslide on the Property, and several hundred tons of debris had come down from a creek. The landslide had caused a tree to go through a gable of the log house on the Property. The Property was in foreclosure. The house required significant renovations. The wiring had been stripped, the plumbing was bad, and there were broken windows.
- [14] Ms. Schnurr testified she had experience with renovations and living "off the grid". Since 2007 she had been living on property she owned "up a mountain in the middle of nowhere" near Greenwood, B.C. She had also previously owned a home for 20 years on Suffolk Avenue in Port Coquitlam with her ex-husband.

- [15] Ms. Schnurr contacted the Fraser Valley Regional District. The District provided her with a geotechnical report dated January 22, 2009. The District had made an emergency evacuation order for the Property earlier in January 2009. The geotechnical report opined that the existing house was not safe for habitation due to a slide hazard, and recommended the evacuation order be extended indefinitely and that as part of an application for a building permit, a geotechnical report be required to determine if a safe building site was available.
- [16] Ms. Schnurr said she was keen to purchase the Property, but because the motor vehicle accident had affected her ability to make decisions, she consulted with her family and friends. The only person who was supportive of her purchasing the Property was Ms. Cindy Rae, a friend who later assisted her in buying the Property. Ms. Schnurr discussed the Property with Ms. Baldwin. She asked Ms. Baldwin if she wanted to purchase the Property with her. Ms. Baldwin told her the Property was dirty and too far away from where she lived. Ms. Schnurr did not think Ms. Baldwin was "truly" interested.
- [17] Ms. Schnurr contacted Ms. Barbara Patrick, the realtor who had the listing for the Property. The Property was listed for \$229,000, down from \$250,000. Ms. Patrick provided Ms. Schnurr with the property tax assessment for the Property. The assessed value, which is not admissible in these proceedings as expert opinion, was \$398,000. Even if this were admissible opinion, there is no evidence the landslide was taken into account in the assessed value.
- [18] Ms. Patrick testified at trial. She said the Property was in foreclosure and she was having difficulty selling the Property because the District would not allow anyone to live on the Property and because of the landslide. Ms. Patrick stated she does not know and has never met Ms. Baldwin.
- [19] In April 2012 Ms. Schnurr made an offer to purchase the Property for \$64,500, with a \$20,000 down payment and subject to financing. In August 2012, the offer was accepted by the mortgagee bank subject to court approval. The signed agreement has an addendum which states the purchaser is aware the house does not have an occupancy permit, and a geotechnical assessment would be required. Ms. Schnurr removed the subjects. The court subsequently approved the sale.
- [20] Ms. Schnurr testified she planned to renovate the Property sufficiently so that she could rent out part of it and use the rental income to pay the mortgage, and eventually retire on the Property. There was no occupancy permit for the Property during the time Ms. Schnurr owned the Property.
- [21] Ms. Schnurr testified that Ms. Baldwin was not involved in the purchase of the Property. Ms. Schnurr made the \$20,000 down payment on September 11, 2012 by way of bank draft drawn on her Heritage Credit Union account. This was corroborated by a copy of the bank draft and her bank statement. The payment came from monies held in trust from the earlier sale of the Suffolk Avenue home. This was corroborated by emails with the lawyer holding those funds in trust, and arranging for payment out of those funds with the consent of Ms.

Schnurr's ex-husband.

- [22] Ms. Schnurr contacted a mortgage broker, Plan B Mortgage Services. She did not qualify for conventional financing with a bank or credit union, and had to rely on private lending. The mortgage broker obtained a financing offer in the amount of \$64,000 at 9% interest for a term of one year, with interest only payments. With all the fees, the total cost was equivalent to an interest rate of nearly 17%. The mortgage offer was subsequently amended to a higher amount and slightly lower rate, and with all payments being pre-paid from the mortgage advance, but the final agreement was not filed in evidence at the trial. The loan was also secured by property owned by Ms. Rae. Ms. Schnurr testified that Ms. Rae was a good friend and neighbour from when she lived on Suffolk Ave. Ms. Rae agreed to mortgage her property and in return Ms. Schnurr paid \$4000 in Ms. Rae's strata fees with funding from the mortgage.
- [23] Ms. Schnurr testified that after she had taken possession of the Property, Ms. Baldwin offered to loan her \$7000. This was subsequently given to her in cash in an envelope. Ms. Schnurr did not tie the timing of the receipt of the cash to a particular day. Ms. Schnurr had already borrowed \$1000 from Ms. Baldwin and she told Ms. Baldwin she would pay back \$10,000 because she did not know when she would be able to repay the funds. Her personal injury lawsuit was ongoing. When Ms. Baldwin lent her the money she told Ms. Baldwin that her family was welcome to camp on the Property. Ms. Baldwin's family camped each summer at a campsite nearby and Ms. Schnurr thought they could use the Property for free. This led to a discussion that Ms. Baldwin was worried about being homeless and Ms. Schnurr saying to Ms. Baldwin that she could pull a trailer onto the Property if she needed to in retirement. Ms. Schnurr kept the money hidden in the house at the Property and said she probably used it for electrical work and eating out.
- [24] Ms. Baldwin testified that Ms. Schnurr showed her the Property and asked if she was interested in it. Ms. Schnurr was looking for someone to purchase the Property with her. Ms. Schnurr was going to make an offer on the house and asked if Ms. Baldwin could see herself living there. Ms. Baldwin said yes. Ms. Baldwin mentioned she had money in an RRSP and she thought the Property would be a better investment for her future. She and Ms. Baldwin discussed that Ms. Baldwin would be a "partner". Ms. Baldwin testified that throughout the events that led to this lawsuit, Ms. Schnurr referred to and introduced Ms. Baldwin as her "partner" or "silent partner".
- [25] Ms. Baldwin produced her investment account statements which show that on November 16, 2012 she sold (in approximate numbers) \$5800 in investments, and on November 20, 2012 sold \$6100 in investments in her RRSP which resulted in \$4700 net of \$1400 in taxes. Those funds went to her bank account. She had no other investments. She produced an excerpt of her bank account ledger which shows that on November 23, 2012 she withdrew \$7000 by way of two "cash withdrawals" in the amount of \$5000 and \$2000. Ms. Baldwin testified she gave this to Ms. Baldwin on November 23, 2012 by way of one or two "cashier's cheques" and not cash. This was for her "share of the partnership".

[26] I turn now to the first of the documents signed by the parties, an agreement dated November 23, 2012 (the "November 2012 Loan Agreement"). It states:

I Vicki Baldwin have leant to Christine Schnurr the sum of \$8000 as loan. We the agreement that Christine Schnurr will pay back Vicki Baldwin \$10000 upon re-mortgaging the property located at 49369 Chilliwack Lake Road, Chilliwack.

If Vicki Baldwin chooses to upon return of the \$10000 from Christine Schnurr she may applies those monies to an interest in the property of same value.

[signatures of Ms. Schnurr and Ms. Baldwin]

Witnessed this day November 23, 2012

[signature of Mr. Bill Miller]

[Emphasis added.]

[27] Ms. Schnurr testified that she and a friend, Mr. Bill Miller, were in Coquitlam and stopped in to visit Ms. Baldwin. She said this was a "random drop in visit". Initially she said Ms. Baldwin "randomly" brought out the November 2012 Loan Agreement, although when she cross-examined Ms. Baldwin she suggested Ms. Baldwin typed it while they were present. Ms. Schnurr told Ms. Baldwin she did not know when she could pay her back and Ms. Baldwin was agreeable to this. Ms. Schnurr agreed the November 2012 Loan Agreement specifically contemplates an interest in the Property, but then went on to question the authenticity of the document. Ms. Schnurr testified she did not recall the second clause and although she did not affirmatively say the clause was not there when she signed the document, she suggested that may have been the situation. She said Ms. Baldwin kept the original. She has asked for the original since the beginning of the lawsuit and Ms. Baldwin has not produced it. Ms. Schnurr stated that "if she had seen the second part", she would have assumed this referred to Ms. Baldwin parking her trailer on the Property.

[28] Ms. Baldwin testified that on November 23, 2012 Ms. Schnurr telephoned her and wanted to come to her home. It was a chaotic day and Ms. Baldwin told Ms. Schnurr that another day would be better, but Ms. Schnurr wanted to come that day. Ms. Baldwin had to go to the bank to get the cashier's cheques. Ms. Schnurr arrived with Mr. Bill Miller and they had coffee. Ms. Baldwin was not sure how the November 2012 Loan Agreement was created, but accepted she likely typed it. She said the words of second paragraph were Ms. Schnurr's words. As to how they came to the \$10,000, Ms. Schnurr owed Ms. Baldwin at least \$1000 already. She could not keep track of money lent back and forth. She did not agree Ms. Schnurr was agreeing to repay her an additional \$2000. It was closer to an extra \$1000 because she had to pay taxes on the money she took out of the RRSP. Ms. Schnurr told Ms. Baldwin she did not know when she could pay back the money, but when she got her personal injury award from the motor vehicle accident litigation she could do so. Ms. Schnurr expected the judgment or settlement to be over \$100,000, so Ms. Baldwin was not worried. Ms. Baldwin testified she does not have the original agreement. She testified the

copy of the November 2012 Loan Agreement produced in this litigation is the same as the original. Ms. Schnurr took the original and told Ms. Baldwin she was going to have it "notarized". Ms. Baldwin said she thought it would be "filed somehow".

- [29] Ms. Baldwin gave confusing and conflicting evidence regarding the nature of the \$10,000. Ms. Baldwin's evidence at her examination for discovery was read in by Ms. Schnurr. At her examination for discovery, Ms. Baldwin testified that she and Ms. Schnurr had a verbal agreement that she was going to be a half owner of the Property, that she was going to pay for half of the \$65,000 purchase price, and she would do so with the \$10,000 which she was told amounted to one-half the down payment. How that amounted to one-half the purchase price was not explored. Ms. Baldwin said she was involved in the negotiations to buy the Property, and had a joint interest in the Property since 2012.
- [30] At trial, Ms. Baldwin testified that she understood the \$10,000 was one-half of the down payment on the Property. She also initially said she did not recall having a conversation with Ms. Schnurr about what the down payment was, and she did not think she knew what the down payment was until the examinations for discovery in this action. Later in her testimony she said that what she meant by her earlier testimony is that Ms. Schnurr told her at the time that the down payment was \$20,000 but she did not see the documentation regarding this until the discovery in the litigation.
- [31] Ms. Baldwin also said the \$10,000 was her "share of the partnership". She did not testify in examination in chief to any specific verbal agreement between the parties that she had a one-half interest in the Property, but said she understood if the \$10,000 was not repaid, her name would go on title "for an interest in the Property of same value", quoting the November 2012 Loan Agreement. When cross-examined, she said she was a joint owner and this meant to her she was a 50% owner, and she expected to be on title since 2012.
- [32] Mr. Bill Miller testified via video. He recalled driving with Ms. Schnurr in Coquitlam. He was under the impression the visit to Ms. Baldwin was a spur-of-the-moment visit as he did not know Ms. Baldwin and would not have planned to visit her. After they arrived, Ms. Schnurr and Ms. Baldwin were reminiscing and he overheard their conversation. Ms. Schnurr was going to borrow money. Ms. Baldwin suggested they should sign something. The November 2012 Loan Agreement was produced and he was asked to witness the parties signing. He read the document himself twice. The document referred to a \$10,000 loan and he had overheard conversation regarding an \$8000 loan. He asked the parties to explain and understood the \$2000 was extra money Ms. Schnurr agreed to pay. He was satisfied, so he witnessed the signatures. After that, he and Ms. Schnurr followed Ms. Baldwin when she drove to a bank. Ms. Baldwin came out with an envelope with cash in large denominations, and gave it to Ms. Schnurr. They then parted. Ms. Baldwin had possession of the November 2012 Loan Agreement. He mentioned to Ms. Schnurr that he and Ms. Schnurr should have a copy of the agreement, and Ms. Schnurr said she would get a copy from Ms. Baldwin and give it to him. He did not testify whether this took place. He testified that the copy of the November 2012 Loan Agreement produced in this litigation is the same document with the

same clauses.

- [33] After Mr. Schnurr purchased the Property, and between December 2012 and September 2015, she did significant renovations. She replaced the electrical, the roof, and the plumbing, doing the latter herself. She produced pictures of her work and receipts for electrical of about \$4500 and a new roof for \$4000. At some point, the renovations were sufficient that Ms. Schnurr was able to rent rooms in the house to tenants while she was still living there on and off herself.
- [34] Initially, Ms. Schnurr was not working other than at a firewood business she ran from her Greenwood property. She still had a mortgage on one of her properties in Greenwood. She said she was focused on getting better from the motor vehicle accident. She embarked on a program of retraining to become a medical transcriptionist. Ms. Schnurr said it took her longer to complete because of her cognitive difficulties. She started earning money from that once she graduated in 2015. She had a shed at her property near Greenwood and set up her medical transcription equipment there. She also did transcription work from the Property. She was living back and forth between Greenwood and the Property.
- [35] Ms. Schnurr testified that over those three years, until she asked Ms. Baldwin about getting a mortgage, she and Ms. Baldwin visited each other about five times at the Property. On one occasion Ms. Baldwin helped her rip burlap from the wall of the house. Ms. Baldwin's landlord, not Ms. Baldwin, gave her a stove for the house. Ms. Schnurr also knew the landlord. She agreed she had a tenant in August 2013 whom she wanted evicted and although she does not recall it, when shown letters to the tenant, agreed she would have asked Ms. Baldwin to deliver those letters. She said if she was "up the mountain" she would get help from anyone she could. She does not recall Ms. Baldwin asking her if she could bring a trailer to the Property so that Ms. Baldwin and her boyfriend could go fishing at the nearby lake, but she would have been agreeable to that.
- [36] Ms. Schnurr denied that for years Ms. Baldwin had asked her to transfer to her an interest in the Property. She said they did not start talking about transferring an interest until later in 2015 when Ms. Baldwin was having difficulty paying her credit card bills.
- [37] Ms. Baldwin stated that from 2012 to 2015 she often visited the Property and did work on it. Ms. Baldwin had an aunt and uncle living in the Chilliwack area and would "quite often" visit her aunt and uncle and go to the Property. In 2015, she visited at least two times per month. A couple of times she helped clean up the yard of the Property. She left her weed whacker on the Property. She helped remove burlap on the walls. She helped move in a king size mattress. She provided a stove and overhead microwave for the house. She met some of the tenants. From 2012 to 2015 she and her boyfriend were interested in going to the Property to enjoy the outdoors and fishing. When she would ask Ms. Schnurr about taking out a camper for a weekend, Ms. Schnurr would say not to interfere with the tenants and make excuses that it was not a good time. They never went out once with the camper. She had marked out an area and intended to put a mobile home on the lower quarter of the Property. The shed

on the Property was supposed to be her storage area, and that is why in 2013, on behalf of Ms. Schnurr, she gave notice to one of the tenants to take items out of the shed.

- [38] Ms. Baldwin testified that during this time she was waiting to get on title to the Property, although she never gave evidence of specific conversations during this time where she asked that an interest be transferred to her. She said she had always had an interest in the Property.
- [39] Ms. Schnurr's private mortgage became due in December 2013. Ms. Schnurr testified she wanted to release her friend Ms. Rae so there would no longer be a mortgage on Ms. Rae's property. Ms. Schnurr's personal injury action had not settled and she needed funds for expert fees and living expenses. Her personal injury lawyer helped her arrange financing through a different mortgage broker, Koch and Associates ("Koch"). In July 2014 Ms. Schnurr obtained funding through Koch for \$120,000. The mortgage on Ms. Rae's home was released. The interest rate on the Koch funding was 10% per annum, compounded monthly, for a one-year term. The monthly payments to be made were added to the principal amount. This mortgage was renewed in December 2015. Although each of the three private mortgages were for a term of one year, there are gaps in time between the expiration of the terms and the next renewal, and it appears the mortgage continued until a new mortgage was in place. Ms. Schnurr testified she never made any monthly payments on any of the mortgages. She thought they were all "pre-paid" and the monthly payments were taken into account with a lesser advancement of funds. Ms. Schnurr was mistaken about this. By September 2015, unbeknownst to her, she owed approximately \$155,000 on the mortgage. Ms. Baldwin was not a borrower or guarantor of any of these mortgages, and she was not involved in any of the refinancing. Ms. Schnurr did not repay Ms. Baldwin the \$10,000 any time she refinanced.

Findings of fact

- [40] I find make the following findings of fact.
- [41] Ms. Baldwin did not pay one-half the down payment and had no involvement in the negotiation, purchase, or initial financing of the Property. Contrary to Ms. Baldwin's evidence at her examination for discovery that she was involved in the negotiations, there was not a single contemporaneous document filed in evidence for the time period from April to October 2012 where Ms. Baldwin is copied or mentioned with respect to the Property. Ms. Patrick said she had never met Ms. Baldwin and as an independent witness, I accept her evidence. Ms. Baldwin did not sign the contract for purchase and sale of the Property or any addenda to that agreement. Ms. Baldwin was not liable on the initial financing. It was Ms. Rae who assisted Ms. Schnurr to obtain financing by providing Ms. Rae's own property as security.

- [42] The \$8,000 loaned was not paid toward the down payment. Ms. Baldwin did lend Ms. Schnurr money, however it was later, on November 23, 2012 after the sale of the Property had completed. Ms. Schnurr amply showed that the down payment came from her own funds in September 2012. Further, Ms. Baldwin's evidence regarding her knowledge of this down payment was inconsistent.
- [43] In the past, Ms. Baldwin had lent Ms. Schnurr \$1000, and on November 23, 2012 lent her another \$7000, which Ms. Schnurr used to live on and for renovations to the Property. The parties agreed that on account of previous funds lent by Ms. Baldwin to Ms. Schnurr, and because Ms. Baldwin would have to wait for repayment, the principal to be repaid was \$10,000.
- [44] There was no alteration to the November 2012 Loan Agreement after it was signed. It does not look like it was altered, and Mr. Miller's testimony, which I accept, confirmed the copy of the November 2012 Loan Agreement that has been produced is what was signed. Mr. Miller is a friend of Ms. Schnurr, and gave evidence contrary to Ms. Schnurr's suggestion the document was altered. I found him to be a forthright witness.
- [45] Ms. Schnurr and Ms. Baldwin did have discussions, consistent with their long friendship and because Ms. Baldwin did lend Ms. Schnurr money, that Ms. Baldwin could park a trailer on the Property to use on a recreational basis, and that in the future when they both were retired, Ms. Baldwin may move to the Property.
- [46] Consistent with the above, the parties executed the November 2012 Loan Agreement. I find the phrase "she may applies those monies to an interest in the property of same value", means exactly that; in the future, upon Ms. Schnurr refinancing and tendering the funds to Ms. Baldwin for repayment, Ms. Baldwin could elect to compel Ms. Schnurr to provide her with a \$10,000 interest in the Property. The agreement is ambiguous as to the nature of the future interest; whether it was as owner or a mortgagee. It is not necessary to resolve that because of intervening events which I discuss below.
- [47] Regardless of the exact nature of the future interest, there was no agreement, verbal or written, that Ms. Baldwin had a future interest equivalent to a one-half interest in the Property, or that she could compel a one-half interest. Ms. Baldwin had no involvement in the purchase of the Property, and was not involved in or liable on the initial or renewal financing. She did not pay half of the down payment. She did not take on any risk with respect to the Property. It is highly improbable that Ms. Schnurr would, by reason of an \$8,000 loan, intend to give Ms. Baldwin a one-half interest in the Property. I agree with Ms. Schnurr that such a suggestion is "absurd".
- [48] Further, the surrounding facts are inconsistent with Ms. Baldwin having an existing ownership interest in the Property up to the autumn 2015. Ms. Schnurr did significant work on the Property. The work that Ms. Baldwin did on the Property was minimal and consistent with the parties' friendship and Ms. Schnurr's offer to use the Property for recreational purposes, rather than any ownership interest. There was no evidence Ms. Baldwin

contributed to the costs of any of the renovations beyond the \$8000 loan. There was no evidence that Ms. Baldwin was involved in renting rooms other than the two times she posted a notice to the tenant in 2013 to remove his items from the shed on the Property. There was no evidence she shared in the rental income from the Property. I find Ms. Baldwin did not visit the Property as frequently as she testified. Her evidence about her visits was vague and there were no communications between the parties in evidence which referred to or would corroborate frequent visits. She also seemed to have difficulty describing details of the house in 2012, which would be inconsistent with having an ownership interest.

- [49] It is also improbable that someone who truly had a one-half interest in a Property would wait three years to have that interest transferred to her. Although it was suggested to Ms. Schnurr in cross-examination that Ms. Baldwin had repeatedly asked her to transfer an interest in the Property, Ms. Baldwin did not give that evidence. There was not a single document produced up to the autumn of 2015 where Ms. Baldwin requested that Ms. Schnurr transfer such an interest to her.
- [50] Ms. Schnurr and Ms. Baldwin were not "partners" at this time (being up to the autumn of 2015) in the purchase or ownership of the Property. There was no evidence of written communications between them where they referred to each other as partners. The November 2012 Loan Agreement does not refer to them as being partners. The November 2012 Loan Agreement evidences a "loan" and the right to compel a future \$10,000 interest in the Property.
- [51] In breach of the November 2012 Loan Agreement, Ms. Schnurr did not offer to repay Ms. Baldwin the \$10,000 loan when she twice refinanced the Property between 2013 and 2015.

September 2015 to May 2017

- [52] Ms. Schnurr testified that in September 2015 she received the judgment in her personal injury lawsuit. She was awarded approximately \$100,000, less than she expected. Ms. Schnurr appealed the judgment. She looked at her finances and what she could do. She was hoping to refinance with a conventional lender to reduce the interest rate. With the rent she was receiving and her other income, Ms. Schnurr thought she could afford a conventional mortgage of up to \$200,000, which she thought was one-half the value of the Property, although I note again there was no expert opinion evidence of the value of the Property. She was not desperate to refinance. She believed the private lender would continue to lend to her. Text messages from January 2016 were shown to Ms. Schnurr where she expressed considerable frustration at her financial situation and suggested she might let the private lender foreclose because she thought the lender was taking advantage of her. Ms. Schnurr said this was not a serious comment. She thinks she could have sustained this mortgage with a monthly payment of about \$1200.

- [53] In September 2015, Ms. Schnurr contacted a different mortgage broker, Mr. Clint Peters, to see if she could get a conventional mortgage if she put her son Mr. Nate Pocha on title. Her son did not have a credit history and Ms. Schnurr subsequently took steps to help her son build a credit rating so he could qualify. Ms. Schnurr also approached her daughter Ms. Dayna Pollard and her ex-partner Mr. Patrick Howard to see if they would be willing to assist her to get financing but they were not able or willing to do so.
- [54] Ms. Schnurr testified that at about this time Ms. Baldwin told her that she was borrowing money from a person she was dating to pay the minimum balance on her credit card debt. Her credit cards and line of credit were at their maximum. Ms. Baldwin told Ms. Schnurr her paycheques were not enough to meet her monthly expenses. Ms. Baldwin's child support payments were about to come to an end and Ms. Baldwin was worried. Ms. Schnurr said she was sympathetic. She owed Ms. Baldwin \$10,000 and it had been three years since the loan.
- [55] Ms. Baldwin testified regarding her financial situation. She was not in "dire straights" or "financial distress" but it was "pretty tight". She had credit card and line of credit debt of approximately \$24,000 at between 13% and 17% interest and she was only making minimum payments. She denied she had to borrow from her boyfriend. She said she might have asked to borrow money from him, but he did not lend her any.
- [56] On October 24, 2015, after Ms. Schnurr had appealed the personal injury judgment, Ms. Baldwin texted Ms. Schnurr:

VB: Hey have you given any thought to what you want to do about the loan for Chilliwack? We need to write it up again

CS: I haven't given it any thought..but yes, we do i think we should wait on the appeal? Who knows right..or if i find work again?

VB: Any leads on work in Chilliwack

VB: We need to write something up before the appeal

[Emphasis added.]

- [57] Ms. Baldwin testified she sent this message because it was now 2015 and she was looking to have her name added to title. Ms. Baldwin agreed "the loan" referred to the November 2012 Loan Agreement. When asked how she thought an \$8000 loan turned into an interest in the Property, she said she never was paid after Ms. Schnurr received money from her personal injury trial. There was no evidence as to what happened with the appeal.
- [58] Ms. Schnurr testified that she telephoned Ms. Baldwin and the "gist" of her proposal was that Ms. Baldwin use the Property to get a conventional mortgage for Ms. Schnurr and in return Ms. Schnurr would use the mortgage funds to pay Ms. Baldwin's credit card and line of credit debt. This was a temporary arrangement to transfer the Property to Ms. Baldwin. The conversation was about how the parties could help each other. Ms. Baldwin "jumped right on it" and they agreed they would "give it a try". Ms. Schnurr agreed there was no discussion in

this conversation of if and when Ms. Baldwin would transfer the Property back to Ms. Schnurr, but Ms. Schnurr assumed Ms. Baldwin would get a five-year mortgage and Ms. Schnurr planned to put her son on title to the Property in the first year. Ms. Schnurr said there was a later text message between the parties that referred to a five-year term. There was no detail in this discussion of the cost to re-convey the Property or what would happen if the Property increased in value.

[59] When Ms. Baldwin was asked in examination in chief about Ms. Schnurr's evidence regarding the phone call and the alleged agreement, she said vaguely she thought this was the time she was trying to get on title because she and Ms. Schnurr were partners. Ms. Baldwin said that Ms. Schnurr talked to her about transferring ownership of the Property into Ms. Baldwin's name and the mortgage would be in Ms. Baldwin's name as well. They discussed there would be closing costs. At the time Ms. Baldwin thought the value of the Property was about \$325,000. When asked if she and Ms. Schnurr had a discussion about what she would have to pay for the Property to be transferred into her name, she answered she had already given \$10,000. When asked if she had to pay anything further, she said "not that I recall".

[60] When Ms. Baldwin was asked in cross-examination if she recalled the phone call with Ms. Schnurr where Ms. Schnurr suggested using Ms. Baldwin's credit to secure a conventional mortgage, she answered that she did not recall the particulars. When asked if she agreed they talked about how Ms. Baldwin might be able to help Ms. Schnurr and in return Ms. Schnurr could help her with credit card debt, she answered that they probably discussed that Ms. Baldwin's credit card debt was high and her difficulties with child support. When asked if they had a conversation that Ms. Baldwin's good credit could help Ms. Schnurr get a conventional mortgage which could pay Ms. Baldwin's credit card debt, she again said she could not recall particulars. Ms. Baldwin said she agreed to get a conventional mortgage in her name. She said she had an interest in the Property and planned to retire there.

[61] On November 11, 2015, Ms. Schnurr emailed Mr. Peters:

Hi Clint, Viki filled out the papers and I am sending them back now. Basically, I own the property located at 49369 Chilliwack Lack Road. The rural assessment is in the line of 430,000. I owe 130,000 on this property and Viki lent me about 10,000 a couple of years ago to get some reno's done here. She is now looking to remortgage in order to pay off her line of credit and credit cards and to move out here. We also have renters (2) which brings in an additional 800 per month. I'm okay with coming off title in order for her to go on title to get the mortgage.

[Emphasis added.]

[62] Attached to the email was a mortgage application signed by Ms. Baldwin on November 11, 2015. The parties agree they were together in the shed on the Property (where Ms. Schnurr had set up her computer) when Ms. Schnurr filled out the forms, Ms. Baldwin signed the forms, and Ms. Schnurr sent the email to Mr. Peters. The parties agree they were excited. On the form Ms. Baldwin represented that the purchase price of the Property was \$170,000, the

down payment was \$10,000, and she was requesting a mortgage amount of \$160,000. She certified that the information given on the mortgage application was true and correct. Her financial disclosure statement stated that \$10,000 from her RRSP went to the down payment. Her credit card and line of credit debts were listed as nearly \$24,000 and the form stated that the mortgage will pay those debts.

- [63] Ms. Schnurr initially denied that the reference to the RRSP in the application was to convey to Mr. Peters that Ms. Baldwin had invested in the Property and that the money Ms. Baldwin lent her three years before was a down payment. She said she and Ms. Baldwin needed to show a down payment, so they listed \$10,000. She said that Mr. Peters knew what they were trying to achieve, and this document was filled out to support that. Ms. Schnurr later agreed she was not entirely "forthright" with Mr. Peters. She "spun things" to make it look like Ms. Baldwin had an interest, but she never spun that Ms. Baldwin had a 50% interest in the Property. She said on the form that she owned the Property. Ms. Schnurr denied that the \$10,000 was half of the equity in the Property. She said that did not include all the work she did on the Property.
- [64] Ms. Baldwin agreed she was present when the mortgage application documents were prepared and sent by email to Mr. Peters. Ms. Baldwin testified she "wasn't too clear about" why Ms. Schnurr was going off title. Ownership was going to go in Ms. Baldwin's name as well as a mortgage. She and Ms. Schnurr calculated what they needed and it came to \$160,000.
- [65] On November 12, 2015, Ms. Schnurr completed similar mortgage application forms for herself and sent them to Mr. Peters. The boxes for purchase price, down payment and mortgage amount were blank. Under the financial disclosure statements, she listed the Property at a value of \$430,000 with a private loan of \$130,000. She said this form was based on Mr. Peters telling her that she did not have to go off title to get a mortgage, so she then sent in another application.
- [66] Meanwhile, Ms. Schnurr knew that a conventional mortgage would not necessarily be granted, so she carried on with seeking financing from her existing private lender. In December 2015 she emailed Koch requesting the payout amount and asking if it would be agreeable if Ms. Baldwin went on title with her for the purpose of securing a conventional mortgage and paying out Koch. Koch was willing to consider this. Ms. Baldwin was not yet on title when Ms. Schnurr renewed the mortgage with Koch in December 2015.
- [67] Ms. Schnurr testified that when she first sent Ms. Baldwin's mortgage application to Mr. Peters, he told her that Ms. Baldwin's credit was good enough to get a mortgage at any bank. Ms. Schnurr and Ms. Baldwin therefore also tried to seek a conventional mortgage on their own without the assistance of Mr. Peters. Ms. Schnurr referred to this as a "pre-approved" mortgage. At the suggestion of Ms. Schnurr, Ms. Baldwin approached Prospera Credit Union ("Prospera"). Texts between the parties on January 26, 2016 referred to the upcoming meeting with Prospera and Ms. Baldwin suggesting they tell Prospera that she gave Ms.

Schnurr a \$20,000 down payment:

VB: If my income is 42000/year and we say I gave you a down-payment of \$20000 then I qualify for a mortgage of \$127890

CS: at 5 percent interest. .at 3.29 you qualify for more

- [68] Ms. Schnurr testified that a day or two before the appointment Ms. Baldwin called her and said Prospera needed to see a purchase and sale agreement. As a result, Ms. Schnurr went on the internet and found a draft purchase and sale agreement form and filled it out. The day before the appointment at Prospera, the parties exchanged the draft agreement by email and Ms. Schnurr asked Ms. Baldwin to print it and bring it to the appointment at Prospera. The parties signed the agreement while they were at Prospera.
- [69] I turn now to the second document the parties signed, which is dated January 28, 2016 and entitled Contract of Purchase and Sale of Real Property (the "January 2016 P/S Agreement"). The purchase price is stated to be \$165,000 for the sale of the entire Property to Ms. Baldwin. The agreement states that "\$20,000 has been received by the Vendor as deposit on account of the proposed purchase". The closing date is February 28, 2016. The agreement is purportedly witnessed by a tenant of Ms. Schnurr's at the time. Ms. Schnurr admitted she forged that tenant's name and he did not witness the document. She said it was her intent to tell him she did this, but she cannot be sure she did tell him. Ms. Baldwin equally knew the tenant did not witness her signature. She said she questioned Ms. Schnurr about this and thought it was okay because she knew the tenant.
- [70] Ms. Schnurr testified that she came up with the \$165,000 sale price as follows: \$120,000 for what she then believed was the mortgage amount outstanding (this turned out to be incorrect); \$20,000 to pay Ms. Baldwin's credit card debts; \$5000 in legal fees and costs; and the \$20,000 down payment, although she stated Ms. Baldwin never gave her a \$20,000 down payment. Ms. Schnurr did not calculate this as 50% of the value of the Property. In her mind, she was simply adding Ms. Baldwin to title. In cross-examination, Ms. Schnurr said she was "prepared to do whatever we needed to do to get a conventional mortgage". When it was put to her that she knew that Ms. Baldwin was going to represent to Prospera that she had purchased the Property, Ms. Schnurr replied that she "didn't give it that kind of thought". When asked if she knew Prospera would rely upon the document, she deflected the question and said she also knew Prospera saw her witness the document.
- [71] Ms. Baldwin testified that she does not recall if she told Ms. Schnurr prior to the appointment that she needed a purchase and sale agreement. There was a list of things Prospera wanted her to bring, and if a purchase and sale agreement was on that list, then she would have told that to Ms. Schnurr. Ms. Baldwin agreed they signed the January 2016 P/S Agreement at Prospera. When asked if there was any discussion that lead to the \$165,000 purchase price, she said she thought that was the mortgage and closing costs. She said it was one-half of \$325,000. When asked if the purchase and sale agreement made it look like she

gave Ms. Schnurr \$20,000, she agreed and said she believed it was part of the process of going on title jointly. Ms. Baldwin denied there was an agreement that this document would be used only for the purpose of trying to obtain a mortgage and no other purpose.

- [72] In early March 2016, Prospera declined to grant a mortgage. Ms. Schnurr testified that once she was told the Prospera mortgage was denied, she never thought about the January 2016 P/S Agreement again. Ms. Schnurr continued to look for sources of financing with the assistance of Mr. Peters. Mr. Peters told her to put Ms. Baldwin's name on title. Ms. Schnurr denied she told Mr. Peters that Ms. Baldwin had an interest in the Property.
- [73] Between late March and May 2016, the parties took steps to put Ms. Baldwin on title so that Mr. Peters could then look for a mortgage for them. Both Ms. Schnurr and Ms. Baldwin sought permission from Koch to add Ms. Baldwin to title. This was ultimately obtained. The text messages between the parties show they were both very anxious to get funding, and Ms. Baldwin was saving money to pay the transfer costs. Ms. Baldwin was in contact with a notary to have the transfer completed. This time though, the transfer was for a one-half interest in the Property.
- [74] I turn now to the third document between the parties, a Form A transfer of the Property (the "May 2016 Transfer Document") signed by Ms. Schnurr on May 16, 2016 in which she transfers title to the Property to herself and Ms. Baldwin for "\$1.00 and love and affection".
- [75] Ms. Schnurr testified that the May 2016 Transfer Document was not giving Ms. Baldwin 50% title, she was just adding her to title. Ms. Schnurr said she did not know this was a 50% interest in the Property. Ms. Schnurr disagreed that after all the work and time Ms. Schnurr put into property that Ms. Baldwin would have a 50% interest. She agreed she received the state of title certificate to the Property after the transfer was registered, which showed the parties were joint tenants. She said there was nothing concerning to her. Ms. Baldwin was on title, she trusted Ms. Baldwin, and they were in a position for Mr. Peters to get them a mortgage.
- [76] Ms. Baldwin stated that after the transfer in May 2016 there was no discussion of Ms. Schnurr paying her \$10,000 because they were partners. Ms. Baldwin said she thought from 2012 to 2016 they were joint owners and she thought joint owners meant 50%. She expected to be on title since 2012. When asked what she had given to Ms. Schnurr to make her joint tenant she said it was the \$10,000. Ms. Baldwin denied any agreement with Ms. Schnurr to hold the Property in trust for her.
- [77] Mr. Peters was called by Ms. Schnurr. It was clear he does not like Ms. Schnurr and is sympathetic to Ms. Baldwin. He testified that Ms. Schnurr had originally suggested her son go on title. Ms. Schnurr told him Ms. Baldwin was a life-long friend and she had some interest in the Property. Ms. Schnurr did not elaborate what that interest was. Ms. Schnurr sent him the November 11, 2015 email with Ms. Baldwin's information. Ms. Baldwin had fair credit. He does not recall telling Ms. Schnurr that Ms. Baldwin had sufficient credit that she could walk into any bank and get a mortgage, nor did he think Ms. Baldwin had that level of

credit. Further, banks do not grant credit solely on credit scores. He said there was nothing untoward about bringing a person on title to secure a mortgage, and it was not unusual to do so. He explained to Ms. Schnurr that one option was to bring Ms. Baldwin on title. He did not give legal advice on the advisability of doing so. He was not familiar with the parties' attempt to get financing at Prospera as it is not one of the lenders he deals with. He was unaware of what happened when Ms. Baldwin first went on title. Ms. Schnurr emailed him and asked if Ms. Baldwin was on title whether they could get a mortgage. A few months passed, and then Ms. Schnurr came back to him and Ms. Baldwin was now on title. Once Ms. Baldwin was on title he communicated with both parties. On the application he submitted to Scotiabank he said that Ms. Baldwin lived at the Property because that is what Ms. Schnurr told him. He agreed he met with Ms. Baldwin at her home in Coquitlam. His understanding was that Ms. Baldwin was moving out to the Property.

[78] Once the Property was in the names of both Ms. Schnurr and Ms. Baldwin, the parties approached Mr. Peters to seek a mortgage. The text messages between the parties from June through to October 2016 show Ms. Baldwin was actively involved in the plan to get financing. Ms. Baldwin was concerned with how much was owed on the existing private mortgage, how much the tenants were paying, and what the cost would be to pay the mortgage, taxes and other expenses of the Property, and to make some repairs to the house. There was an occasional reference to her moving a recreational trailer to the Property.

[79] Several text messages between the parties show both parties knew that if Ms. Baldwin was not living on the Property they would be unlikely to get a mortgage or insurance for the Property, and that they both were misrepresenting that Ms. Baldwin was living at the Property. For example, after Ms. Baldwin said she would contact Mr. Peters, on June 3, Ms. Schnurr said:

CS: how is the mortgage coming along oh..please remember, it is essential that you tell them you are living there that the house will be your primary residence so you can get the mortgage, you will not be eligible otherwise vik

[80] On July 4, 2016, Koch emailed Ms. Schnurr with the payout amount as of July 15, 2016. The amount was approximately \$152,000. Ms. Schnurr was surprised by this. She had been under the impression that the monthly mortgage payments were pre-paid from the amount advanced, and they were not. In text messages in early July, Ms. Baldwin expressed concern that the private mortgage to be paid was larger than they anticipated, there was an unexpected property tax bill, and they would not be able to pay her credit card bills from the mortgage amount. She was also concerned the rent may not cover the mortgage, taxes and utilities and there would be no money left over to repair the house. She wondered if this was workable. For example, on July 5, 2016, amongst other text messages, the parties had this exchange:

CS: no kidding. which is why it is going in your name to get a proper mortgage? you sound surprised, when the only surprise really is the payout amount, and really it is not surprising since these guy are crooks

VB: yes but i can't be held responsible for the payments cause I have other bills.

CS: just keep thinking (it is what I do) that once we have a solid mortgage and know the payments, we can start paying shit down. then in 10-15 years, we are mortgage free and old but have no mortgage and a place to live i will start making payments on your credit card if it comes to that, just to get rid of that debt but i think it won't come to that.

VB: my credit card debt is killing me and I only have 10 years left of working

[Emphasis added.]

[81] As another example, on July 8, 2016, Ms. Baldwin texted this:

VB: this place has become a cash grab and I was led to believe it was all taken care of and now you tell me that the taxes are still not paid and instead of being \$1850 they are \$2400 next week we need to have a mortgage and yes we need more renters the cost to run the house is @1350 per month but that # was calculated at a \$126000 mortgage

[82] The text messages also concerned Ms. Schnurr's name coming off title. On July 21, 2016, Ms. Baldwin texted:

VB: I hope we hear from Clint today. Are you planning on taking your name off temporarily when the mortgage goes through

VB: it should all be done as soon as Clint gets me approved for the mortgage

[Emphasis added.]

[83] On July 26, 2016, after Ms. Baldwin said she was approved for the mortgage, and set out the monthly payment, the parties had this exchange:

CS: and that pays off your credit card? so you are not officially approved then vik if you still need to get them stuff

VB: yes i think so but doesn't leave anything for repairs Clint said I was approved

CS: I'll call him tomorrow

VB: K then are you taking your name off for awhile

CS: vik, you or we would never qualify with my credit as it is..that was the point, and to get enough to pay you back, but still small enough payments that rental income can cover it..I'll make up any deficits if there are any

I have a form so that norms [Norm's] rent 500 will be direct deposit to the account that gets set up

[Emphasis added.]

[84] On September 6 2016, Scotiabank approved the mortgage in the amount of \$185,000 at 2.49% but subject to a number of conditions. One condition was that Ms. Baldwin had to occupy the Property as her principal residence.

[85] On September 15, 2016, Ms. Baldwin texted Ms. Schnurr that it was necessary for her to remove her name from title in order to get the mortgage, and that Ms. Schnurr needed to go to a notary to do so:

VB: Wtf is the postal code and you need to go to a notary to remove your name

CS: the postal code is V4Z 1A6 I have actually never heard of someone going to a notary to remove their name..that is a bit odd it should auto come off when you register the mortgage

VB: I think we need to remove your name before I sign

CB: other than taking a day off work, that is David Chung should know but i won't be around until after the 20th

VB: So how are we going to get your name off title before the closing date

CS: as i mentioned, it usually is just auto when signing new mortgage papers or it has been in the past i don't know if things changed in that regard

VB: Should I just tell them to contact you to get your permission to remove your name

CS: sure if it comes up..but keep me in the loop as i'm not in cell service either i do have email if that helps

VB: K so I just go off the phone with Wendy from David Chung the lawyers office and you need to find a notary to sign off on and send me the insurance papers or information

CB: can they send you something for me to "sign off" on?

VB: [telephone number of lawyer] I told her you are signing off because you owed me \$ lol

CS: pardon me? why would you say that?

VB: They needed to know why you are going off title and it's simpler than getting taxed again I told yes I still talk to you and we are friends

CS: Vik, just as long as you realize that you are being more than paid back like sometimes i worry you don't get that

CS: you do not need to tell them anything i is not their business..and i don't know what you mean about getting taxed again?

VB: Oh yes I get it thanks but I just kept it simple no details it's none of their business we just need to get the papers signed and then we can both breath. ...

[Emphasis added.]

[86] Ms. Schnurr testified this was the first time she was made aware that her name had to come off title to get a conventional mortgage. She thought when someone renews a mortgage they automatically come off the mortgage, not the property. She trusted Ms. Baldwin.

[87] On September 19, 2016, amidst a number of text messages regarding the cost of an appraisal, which Ms. Baldwin had paid, Ms. Schnurr stated:

CS: I think it would be a good idea to add all of the out of pocket so you can see that what you have been paid back at the end of the day has been significantly more than adequate i do realize that it has been tight up until the mortgage is final though and all your bills are paid definitely worth some alcohol!!

[88] In turn now to the fourth set of documents. On September 21, 2016, Ms. Schnurr executed a Form A transfer document (the "September 2016 Transfer Document") transferring the other one-half interest in the Property to Ms. Baldwin. The September 2016 Transfer Document was signed before a notary in Abbotsford. Ms. Baldwin was now solely on title to the Property. The September 2016 Transfer Document states the consideration is "\$1 and other good and valuable consideration", and that the market value of the Property is \$325,000. On the same day, Ms. Schnurr executed a statutory declaration stating:

2. That I am one of the owners of the above Property registered under number CA5235560.
3. That I am transferring my 50% interest in the Property, by way of a Freehold Transfer, to my friend, Vicki Lee Baldwin.
4. That I am receiving the sum of \$0.00 from Vicki Lee Baldwin or ClearPath Law Group for my 50% interest in the Property and I will not be seeking any further compensation from either Vicki Lee Baldwin or ClearPath Law Group for my 50% interest in the Property.
5. That I confirm and acknowledge that I will no longer have an interest in the Property upon registration of the Freehold Transfer.

[Emphasis added.]

[89] Ms. Schnurr attended before a different notary to sign the documents. She testified she did not discuss the statutory declaration with the notary as it was not the notary's role to explain the document to her. She assumes the notary asked if she swore it to be true. When asked if she did not take the statutory declaration seriously she answered what she took seriously was her agreement with Ms. Baldwin to pay Ms. Baldwin's debt and get a conventional mortgage. She said the statutory declaration was not the agreement she had with Ms. Baldwin. Ms. Schnurr said she retained the entire interest in the Property. She agreed the statutory declaration was false. I also note that at one point Ms. Schnurr testified she signed the statutory declaration or a document similar to it that Ms. Baldwin brought out to her when Ms. Baldwin was seeing her notary. This also appears to be incorrect given the signature and stamp of the notary on the statutory declaration.

- [90] Ms. Schnurr testified she and Ms. Baldwin agreed that Ms. Schnurr would put Ms. Baldwin on title for the purpose of securing a conventional mortgage. Ms. Baldwin would hold the Property in her name until Ms. Schnurr or Ms. Schnurr's son could obtain financing and take over that mortgage. In exchange, Ms. Schnurr agreed to pay Ms. Baldwin's credit card debt and line of credit debt of approximately \$24,000. This was to subsume the \$10,000 already owed by Ms. Schnurr to Ms. Baldwin. Ms. Schnurr and Ms. Baldwin agreed Ms. Schnurr would rent rooms in the house and the rental income would be used to pay the mortgage and expenses. Ms. Schnurr assumed the responsibility for any short fall in funds. Ms. Schnurr said she never had any intent to add Ms. Baldwin to title other than temporarily for the purpose of securing a conventional mortgage. Even though Ms. Baldwin was excited to build a cottage on the Property, Ms. Schnurr said that did not involve an interest in the Property. There was never any question whose Property it was or who was living on the Property. Ms. Schnurr stated that at all times Ms. Baldwin was holding the Property "in trust" for her, although she never testified that the parties used those words.
- [91] Ms. Baldwin denied she was holding the Property in trust for Ms. Schnurr. Ms. Schnurr read in Ms. Baldwin's examination for discovery evidence where Ms. Baldwin said that she purchased this half interest in the Property for \$165,000. Ms. Baldwin testified that she and Ms. Schnurr agreed that Ms. Schnurr would continue to stay at the Property and in exchange she would rent rooms, collect the rent and pay the monthly mortgage amount, hydro, internet and taxes according to the budget they came up with. Ms. Schnurr had lived at the property since 2012 and Ms. Baldwin was not ready to move to the Property full time. Ms. Schnurr had access to Ms. Baldwin's Scotiabank account so she could collect the rent and pay the expenses.
- [92] In cross-examination, Ms. Baldwin said that prior to entering into the agreement, she had asked Ms. Schnurr to show her three months of bank statements and Ms. Schnurr showed her that she received CPP payments and transcription income. The total income was about \$2200 per month and she thought Ms. Schnurr would be able to make payments if there were no renters. When Ms. Schnurr asked Ms. Baldwin to agree there was an agreement the Property would be put in Ms. Baldwin's name and that Ms. Schnurr agreed to increase the mortgage amount to pay Ms. Baldwin's credit card debt, Ms. Baldwin did not respond directly. She answered she had to see if she qualified for a mortgage, it was the bank's choice about the amount of the mortgage, and Ms. Baldwin actually qualified for more. She said it was not Ms. Schnurr's "choice" regarding the amount of the mortgage and she did not understand the question. She finally agreed that Ms. Schnurr used her equity in the Property to increase the mortgage, and said Ms. Schnurr was responsible for paying bills, but said she was responsible to pay the mortgage because she was liable on the mortgage and it was her credit rating which was at risk.
- [93] The bank funded on October 3, 2016. Ms. Schnurr testified that Ms. Baldwin copied her on all correspondence about funding and insurance, and that Ms. Schnurr was in sole possession of all the mortgage documents. The revised order to pay showed that of the

\$185,000 mortgage, approximately \$155,000 went to pay the private lender, approximately \$23,500 was paid to Ms. Baldwin's credit card and line of credit, \$3500 was paid to outstanding property taxes which were in arrears, and almost all of the remainder paid to fees. The balance of approximately \$926 was paid to Ms. Baldwin and deposited into Ms. Baldwin's account at Scotiabank.

- [94] Once the Scotiabank mortgage funding was available, things went badly very quickly, and Ms. Schnurr struggled to keep the monthly mortgage payments or required house insurance payments current. On October 6, 2016, three days after funding, Ms. Schnurr texted Ms. Baldwin saying the mortgage payment might be a day late and it would take her a month to "get organized". Ms. Schnurr went on to discuss the possibility of adjusting the monthly payment down approximately \$200 to not include an installment toward property taxes. Ms. Schnurr testified that she subsequently went on-line and did this. The monthly mortgage payment not including property taxes was approximately \$830. This did not include any utilities.
- [95] By the end of October 2016 Ms. Schnurr was having problems paying both the house insurance and the mortgage payments. Ms. Baldwin was upset that nearly \$500 in insurance payments were taken from her account to pay house insurance. Ms. Baldwin asked Ms. Schnurr to repay this sum. By the end of November 2016 Ms. Schnurr had not repaid it. At that point, Ms. Schnurr told Ms. Baldwin it would take another month. Ms. Schnurr stated that Ms. Baldwin was acting a "bit irrational". Ms. Baldwin replied it was her credit rating that was being affected.
- [96] Ms. Baldwin testified that in December 2016 she noticed that the mortgage payment had not gone through. Ms. Schnurr called Ms. Baldwin and told her she had to put money into the account. Ms. Baldwin did not know what had happened to the \$926 which was the extra money after the mortgage was funded. When she asked Ms. Schnurr where the extra funds had gone, Ms. Schnurr told her she used it for car insurance. Ms. Baldwin arranged for a \$1000 overdraft at the bank.
- [97] The text messages between the parties between December 2016 and April 2017 show increasing concern by Ms. Baldwin that Ms. Schnurr was not able to make the mortgage and house insurance payments. Ms. Baldwin was concerned regarding her credit rating and her inability to pay the mortgage if Ms. Schnurr did not. The text messages between the parties included discussion of Ms. Schnurr's son going on title. On March 1, 2017, Ms. Baldwin texted the following to Ms. Schnurr:

VB: What's happening with Nate taking over

[98] There was no text message response from Ms. Schnurr to this question. Ms. Schnurr stated she was exhausted and trying to work to pay down the overdraft. She asked Ms. Schnurr to keep track what was owed to her. A similar conversation about trying to catch up with the overdraft took place in the middle of the March, 2017. On March 18, 2017, Ms. Baldwin again texted:

VB: And what's happening with nate getting his name on title

[99] There was no text message response from Ms. Schnurr to this question.

[100] The financial difficulties came to a head in April 2017. Ms. Schnurr stated that after she deposited money at the end of March to cover the upcoming mortgage payment, she discovered that the house insurer was going to take money from the account and two days later would try to do the same thing. Each time the insurance company did this, it cost \$50 in non-sufficient fund fees. So, she withdrew money from the account until she had the money to pay the entire mortgage payment. On April 18, 2017, Ms. Schnurr tried to deposit \$900 to the mortgage account for the mortgage payment but found that her access to the account had been blocked. She then tried to send \$850 to Ms. Baldwin directly but that was also refused. Between the times she tried to send the two deposits, she had heard from the tenants that Ms. Baldwin had been in contact with them and said she was moving Ms. Schnurr off the Property.

[101] Ms. Baldwin testified that in April 2017 she checked the Scotiabank account and there was not enough money to pay the mortgage. There should have been funds there as the rent was \$1200. She tried to reach Ms. Schnurr to ask where the money was and could not reach her. Ms. Baldwin borrowed money either from her sister or children to pay the mortgage. On April 10, 2017 Ms. Baldwin created another account to which Ms. Schnurr did not have access. She went to the Property and met the tenants, and made arrangements for the tenants to pay rent directly to her.

[102] Ms. Schnurr maintained that she could afford the Property and could have maintained even the private mortgage on her own. She agreed she had never paid any rental income she had received to pay down the private mortgages. When it was put to Ms. Schnurr that even when there was a conventional mortgage on the Property, she could not reliably pay the mortgage, she said "things come up". For example, at Christmas, her priority was to buy gifts. She said the December payment came out of the overdraft and she would have been responsible for paying that back. It was a transition. She had new tenants starting September 2017, and they eventually rented the entire house increasing their rent from \$500 to \$800 to eventually \$1200 per month commencing March 1, 2017. Ms. Schnurr was also increasing her proficiency in medical transcription to earn more money.

[103] Ms. Schnurr produced the email deposits she made to the Scotiabank account intended to fund the mortgage payment and other expenses, starting in October 2016 up to April 2017. Ms. Baldwin produced monthly bank statements from that account. The net deposit and personal withdrawals by Ms. Schnurr, before payment of the mortgage, taxes, insurance or utilities was:

October 2016:

\$835

November 2016:

\$1425

December 2016:

\$180

January 2017:

\$925

February 2017:

\$(50)

March 2017:

\$1295

Up to April 2017:

\$170

[104] The relationship between the parties disintegrated further after this. Ms. Schnurr felt Ms. Baldwin had overstepped her authority and had meddled with the tenants and turned them against her. Ms. Schnurr's repeated prior consistent statements in the messages to Ms. Baldwin as to her ownership of the Property are not admissible for the truth or to boost Ms. Schnurr's credibility, but they are relevant to show the context of Ms. Baldwin response. In April 20 and 22, 2017 text messages, Ms. Schnurr threatened to "put the house in someone's name" and said she had two people in mind. Ms. Baldwin inquired who they were and texted:

VB: Remember it's easier to add family So maybe nate or nikki

[105] When Ms. Schnurr said her son would be "taking over" in the next few weeks, Ms. Baldwin stated:

VB: See easier to add family to title

[106] On April 30, 2017 when Ms. Schnurr advised her son would be taking over the house and mortgage, Ms. Baldwin replied:

VB: That's good news Nate qualifies for the mortgage. Yes I agree this friendship is over.

CS: I'll let you know when the paperwork is organized for Nathan to take over

VB: K just pass my contact information onto Nathan. Thanks for responding to my message.

[107] Ms. Baldwin was asked what the "Nate qualifies" referred to. She said she guessed Nate had a good paying job and he was going to be making mortgage payments. The next day, May 1, 2017, Ms. Schnurr wrote to Ms. Baldwin saying she had spoken to Mr. Peters and:

CS: He says the easiest way is for you to contact the Scotia to see if you can add Nate to the mortgage; that he is going to be living there and you would like him to be on the mortgage. You might to wait a bit to do that, I'm not sure I would wait a month or two,. At least until i've got the o/d paid up and things are running more smoothly after he is on the mortgage he can take over title. Otherwise, it would have to be like a "sale" and Clint could get him a mortgage, since he's a broker and Nate makes upward of 70 or more a year, but the costs would be more (eg. 3 months to the bank for the mortgage and the land taxes) and this process would like take a bit longer and would actually cost you money (the government would want it's percentage from you for a sale of a property you don't live on).

[108] However, on May 3, 2017 Ms. Baldwin responded to Ms. Schnurr stating that the tenants wanted Ms. Schnurr's belongings out of the house. Ms. Schnurr had begun living in the shed on the Property in April 2017, and Ms. Baldwin demanded \$1100 rent from Ms. Schnurr if she continued to live there. With respect to the sale of the Property, Ms. Baldwin stated:

VB: I have been in contact with Clint and mentioned to him the property is under my name and it is not for sale.

[109] Ms. Baldwin testified the Property was not for sale at the time. She had tenants and they were willing to stay on. She said Ms. Schnurr's son never contacted her. She also said that she had gone to the Land Title Office and found out she was solely on title.

Findings of fact

[110] I make the following findings of fact.

[111] In 2015 and 2016, both Ms. Schnurr and Ms. Baldwin were in a poor financial situation and needed funding. Despite Ms. Schnurr's protestations to the contrary, she could not afford the private lending mortgage and a high interest rate. She had not made a single payment toward the mortgages in the three years she owned the Property. Ms. Baldwin was burdened by significant credit card and line of credit debt, also at a high rate of interest. It is clear from the many text messages that both parties were stressed and very anxious to get funding.

- [112] I do not accept Ms. Baldwin's evidence that when she texted Ms. Schnurr in October 2015, she was looking to have her name added to title, or that she had always considered that she was a joint owner. The text message does not refer to a transfer or title; it refers to a "loan" and "writ[ing] something up".
- [113] In October or November 2015 the parties entered into an agreement the terms of which were that Ms. Baldwin would attempt to obtain a conventional mortgage using her credit rating and Ms. Schnurr's equity in the Property, for the purpose of securing a conventional mortgage which would be sufficient to pay Ms. Schnurr's private mortgage and Ms. Baldwin's credit card and line of credit debt. Ms. Baldwin would be placed on title to obtain the mortgage. As between the parties, Ms. Schnurr would be responsible for the payment of all mortgage payments and expenses related to the Property until she could qualify for her own conventional mortgage and have the Property re-conveyed to her, or a family member would be able to do the same. The \$10,000 debt was subsumed into the payment of Ms. Baldwin's credit card debt. I find that because the \$10,000 loan had not been repaid, Ms. Baldwin was entitled to compel an interest in the Property to the value of \$10,000 and the parties intended to provide her with a beneficial ownership interest to that extent.
- [114] I find the June 2016 Transfer Document transferred a legal and beneficial interest in the Property to Ms. Baldwin to the extent of \$10,000 only, and that to the extent the value of that one-half interest in the Property exceeded \$10,000, Ms. Schnurr was the beneficial owner. I find that Ms. Schnurr did not intend to transfer any beneficial interest in the Property above \$10,000 to Ms. Baldwin, and I find Ms. Baldwin knew that was so and was agreed to that.
- [115] With respect to the \$10,000 interest in the Property, I reject Ms. Schnurr's evidence that Ms. Baldwin did not have any interest at this time in the Property. Ms. Schnurr's evidence is inconsistent with the November 2012 Loan Agreement, and that three years had gone by and she had not repaid Ms. Baldwin the \$10,000. Ms. Schnurr was now re-mortgaging and Ms. Baldwin could compel an interest in the Property. I accept Ms. Baldwin's evidence that a transfer of an interest was intended, but I do not accept her evidence that it was a one-half interest. Further, Ms. Baldwin's actions are consistent with gaining an interest in the Property as of the autumn of 2015. Prior to November 2015, there is little evidence of Ms. Baldwin's involvement in the Property. Once the agreement is reached between the parties in October or November 2015, the text messages show her active involvement in the plan to obtain financing, have renters, repair the house, and move a recreational trailer to the Property.
- [116] For the reasons detailed earlier, I have already rejected Ms. Baldwin's position that the June 2016 Transfer Document was in fulfillment of an alleged earlier agreement that Ms. Baldwin was a partner and had a one-half interest in the Property since 2012. It is highly improbable that Ms. Baldwin would transfer a one-half interest in the Property, which she believed (whether or not this was the value) was worth \$325,000 in exchange for a \$10,000 loan made three years previously. None of the text messages between the parties reference any such previous agreement that Ms. Baldwin had a one-half interest in the Property.

- [117] With respect to the transfer of the remaining one-half interest in the Property in September 2016 and the agreement to pay the mortgage and other expenses of the Property, I accept Ms. Schnurr's evidence and reject Ms. Baldwin's evidence. The contemporaneous text messages between the parties are consistent with Ms. Schnurr's evidence, and inconsistent with Ms. Baldwin's evidence. There is not a single message which indicates the September 2016 Transfer Document was Ms. Baldwin purchasing and Ms. Schnurr selling the Property. There is not a single message which indicates the Property now belonged to Ms. Baldwin and Ms. Schnurr was now a tenant.
- [118] Further, Ms. Baldwin's evidence regarding the discussions between the parties leading up to the mortgage application being sent to Mr. Peters was vague. She never testified they had an agreement for her to purchase the Property. As between the parties, Ms. Baldwin never assumed responsibility for the mortgage or any other expenses associated with the Property. She makes it clear these are Ms. Schnurr's responsibility, which is highly unusual for a "tenant". Text messages show Ms. Baldwin wanted to be repaid any amounts she had to expend. The messages also indicate Ms. Baldwin knew that Ms. Schnurr would come off title "temporarily". If Ms. Baldwin was the purchaser of the Property, there would be no reason Ms. Schnurr's name would be taken off "temporarily".
- [119] It is evident the parties did not realize until September 2016 that Ms. Schnurr would have to come off title completely in order to obtain the Scotiabank mortgage. The September 15, 2016 text messages are particularly revealing. Ms. Baldwin told the lawyers who apparently questioned the transaction that Ms. Schnurr owed her a lot of money "lol". If this was truly a sale, the obvious thing would be to say that.
- [120] The statutory declaration sworn by Ms. Schnurr on September 21, 2016 was both true and false. It is true that she did not receive any money from Ms. Baldwin, but it is false that she would no longer have an interest in the Property. Although false statutory declarations are not condoned, and Ms. Schnurr is solely responsible for this false declaration, it was part of the deception in which both parties participated and likely followed Ms. Baldwin's false statement to her own counsel on September 15, 2016 regarding the reason for the transfer.
- [121] In March 2017, Ms. Baldwin referred to Ms. Schnurr's son "taking over" and "getting on title", consistent with Ms. Schnurr's testimony regarding their agreement. As discussed below, it is only after the parties' relationship completely breaks down and Ms. Baldwin speaks to Mr. Peters in early May 2017 that Ms. Baldwin states the Property is "not for sale". In the circumstances, Ms. Baldwin's evidence that this referred only to the mortgage is not believable. The son could not take over the mortgage without being on title.
- [122] I find that the transfer of the remaining one-half interest of the Property in September 2016 was not intended by Ms. Schnurr or Ms. Baldwin to transfer to Ms. Baldwin a beneficial interest in the Property.

- [123] The mortgage application documents sent to Mr. Peters in November 2015 contained false information intended to deceive Mr. Peters and prospective lenders that Ms. Baldwin was going to purchase the Property for \$170,000 and had already made a down payment of \$10,000. None of this is true and both parties participated in these false representations. The parties never testified to, nor did they make an agreement, that Ms. Baldwin would purchase the Property for \$170,000. I have already found that Ms. Baldwin did not pay one-half of the down payment. Later, both Ms. Baldwin and Ms. Schnurr misrepresented to Mr. Peters that Ms. Baldwin would be or was living at the Property. This was for the purpose of obtaining a mortgage that they both knew they would not be able to obtain if the truth were revealed to Scotiabank.
- [124] The January 2016 P/S Agreement was a sham document, intended to represent to Prospera that Ms. Baldwin would be purchasing the Property. None of this is true and both parties participated in these false representations. I find Ms. Baldwin and Ms. Schnurr never intended to nor treated this as a binding agreement for a purchase and sale of the entire Property for \$165,000, nor did Ms. Baldwin provide Ms. Schnurr with a \$20,000 down payment. Neither party mentioned the agreement again in the text messages between them. The inconsistency between the January 2016 P/S Agreement which transferred the entire interest in the Property, and the June 2016 Transfer Document which transferred a one-half interest in the Property, reinforces my finding that neither party intended this document to be binding.
- [125] It is preposterous that after all of the significant work Ms. Schnurr did on the Property, and the parties agreeing Ms. Schnurr would be responsible for all the mortgage payments and costs associated with the Property, that Ms. Baldwin would have the beneficial ownership of the entirety of a Property the parties thought was worth \$325,000. This is especially so when it is considered that apart from the \$10,000 loan, Ms. Baldwin paid nothing and received a \$23,500 benefit by having all of her credit card and line of credit debt paid. I appreciate that Ms. Baldwin was now legally responsible on the mortgage, but realistically, the risk of that was nil or close to nil. There was some risk to her credit rating if the mortgage was not paid, but she just had all of her debts paid. There was, as proven by the subsequent sale, equity in the Property.

May 2017 to January 2018

- [126] The events subsequent to the transfer and the breakdown of the relationship between the parties are not relevant to the claim of establishment of a trust and unjust enrichment, but are relevant to the claims for disposal of Ms. Schnurr's personal belongings, the counterclaim for trespass and conversion of rental income, and potential remedies.
- [127] I note here that mid-way through the trial, Ms. Schnurr applied to amend her notice of civil claim. She eventually decided to withdraw some of those proposed amendments and I granted other amendments. Ms. Schnurr agreed to limit her claim to the amount held in the trust account of Ms. Baldwin's lawyer, the return of \$15,385.75 (which was the net benefit of

the credit card and line of credit debt paid less the \$10,000), the amount claimed for disposal of her personal belongings the fair market value of which she estimated to be \$26,565, and punitive damages.

Ms. Nygard and Mr. Girard tenancy

[128] Starting in September 2016 Ms. Schnurr rented one room in the house to Ms. Dana Nygard and Mr. Marten Girard. As of March 1, 2017, the tenants agreed to rent the entire house for \$1200 per month. At that point, Ms. Schnurr planned to live in the shed on the Property, or at her property near Greenwood.

[129] Ms. Schnurr testified that she had a good relationship with the tenants until Ms. Baldwin started meddling in April 2017. Text messages between Ms. Nygard and Ms. Schnurr up to that point show a friendly relationship, and a definite change in tenor after mid-April 2017. Ms. Baldwin said she was getting calls from the tenants making complaints.

[130] Ms. Nygard testified. She said she and Mr. Girard initially liked living at the Property and would have continued to do so if they could have had peaceful possession, but that was not what happened. Ms. Schnurr did not remove her personal belongings from the house for March 1, 2017 after they rented the entire house. Ms. Schnurr left her room in a terrible unsanitary mess and they incurred costs in cleaning it. Ms. Schnurr then permitted other people to come on to or live in a trailer on the Property which disrupted their peaceful enjoyment and Ms. Nygard's feeling of safety. There were a number of other issues. The tenants were caught in the middle of the dispute between Ms. Schnurr and Ms. Baldwin, and did not want to get involved. The tenants let Ms. Baldwin know they were not happy, and at Ms. Baldwin's request, Ms. Nygard provided a letter to Ms. Baldwin setting out their concerns, which Ms. Baldwin subsequently used at a Residential Tenancy Branch ("RTB") hearing, and attached to her affidavit filed in August 2017 to obtain for an order for conduct of sale of the Property. The tenants terminated their tenancy as of the end of August 2017.

Disruption of internet and electricity

[131] Ms. Schnurr testified that someone cut the internet cables at least three times at the Property so that she could not get internet at the shed, which she needed to do medical transcription work. Someone also put a lock box on the electrical outlet she had installed in the carport and she could not plug an extension cord into it to get electricity to the shed.

[132] In my view, Ms. Baldwin was evasive in her answers concerning this. Ms. Baldwin was shown a picture of the electrical lock box and when asked said she could not "say for sure" what it was. She was then asked whether she put in the lock box. She said no. She was then asked if she had any idea how it got there and she said she did. When asked what the idea was, she said the tenants installed it. She said she asked the tenants if they knew how to install it, and this was to keep the electricity safe. Even though she initially said she did not install it, the fact was that she did not personally physically install it, but asked the tenants

to do it.

- [133] Ms. Baldwin's evidence at her examination for discovery which was read in and which concerned disconnection of internet service was similarly evasive. For example, she was asked whether she arranged to have Ms. Schnurr's internet connection cut-off. She asked to have a description of "cut-off". When she was asked if she ever had the Shaw connection severed, she asked "how do you say "severed"?"

Residential Tenancy Branch proceedings

- [134] On May 8, 2017, Ms. Schnurr received a notice from Ms. Baldwin that she intended to end Ms. Schnurr's tenancy at the Property, and enclosing documents filed at the RTB. The documents which Ms. Baldwin filed included the February 2016 P/S Agreement used for the failed attempt to get financing at Prospera, which had been stapled to the Revised Order to Pay from the transfer of the one-half interest in September 2016, when the Scotiabank mortgage was obtained, as if these were the same transaction. Ms. Baldwin said it was a mistake these two documents were stapled together.
- [135] The RTB telephone hearing was on June 28, 2017. Ms. Baldwin sought an order of possession for unpaid rent. Ms. Schnurr sought cancellation of the 10-day notice to end tenancy and an order that she have possession of the Property. Ms. Baldwin claimed there was a verbal tenancy agreement between her and Ms. Schnurr. Ms. Schnurr denied any tenancy and claimed Ms. Baldwin held the Property in trust for her. The RTB adjudicator declined jurisdiction over both applications as they were substantially linked to this action which had by then been filed by Ms. Schnurr.

Mr. Escola's use of the Property

- [136] Ms. Schnurr had permitted a friend of hers, Mr. Jerry Escola, to move a trailer onto the lower portion of the Property. He lived on the Property from June to August 2017, but did not pay any rent. Because there was no water to his trailer, Ms. Schnurr put a hose from the creek on the Property to his trailer to create a gravity-fed water system. Ms. Schnurr testified that she had arranged for Mr. Escola to rent two rooms in the house for \$850 commencing September 1, 2017. On August 20, 2017 Mr. Escola sent \$850 to Ms. Baldwin by e-transfer. Ms. Baldwin did not accept this transfer.

Application for conduct of sale and injunction

- [137] On August 31, 2017 Ms. Baldwin brought an application for conduct of sale of the Property. This was opposed by Ms. Schnurr who at that time had counsel. Mr. Justice N. Brown granted Ms. Baldwin conduct of sale of the Property and prohibited Ms. Schnurr from entering onto the Property, enforceable by a peace officer. Justice Brown subsequently issued written reasons on October 23, 2017, indexed at 2017 BCSC 1894. Mr. Justice Brown found that the sale of the Property was both necessary and expedient. He did not rule on

the dispute between the parties. He found Ms. Schnurr could not buy out Ms. Baldwin and the Property was not insured. Tenants were needed to pay the mortgage. The sale was logically advantageous for both parties, and the equity could be preserved. No one suggested the Property was unique. Mr. Justice Brown had before him the January 2016 P/S Agreement, which appears to have been filed by Ms. Schnurr. Ms. Baldwin agreed in cross-examination that she swore in her August 4, 2017 affidavit filed in support of the order, that in October 2016 Ms. Schnurr sold her one-half interest in the Property to her for \$165,000, slightly more than half the declared value of the Property of \$325,000.

[138] I pause here to note that Ms. Schnurr gave evidence that she thought Ms. Baldwin had misrepresented to Mr. Justice Brown whether or not the house was insured. There was evidence of Ms. Baldwin cancelling and reinstating the insurance in March, but this pre-dates the cancellation letter from the insurance company. Not having the transcript of the proceedings before Mr. Justice Brown, nor the complete correspondence with the insurance company, I am not persuaded there was a misrepresentation regarding insurance.

[139] Ms. Baldwin said she did not rent the Property after September 1, 2017. She was trying to get the house sold. She hired Mr. Clint Peters as the realtor.

Disposal of Ms. Schnurr's personal property

[140] Ms. Schnurr has claimed for personal belongings of hers that she alleges were disposed of by Ms. Baldwin. Ms. Schnurr provided a list of all of her personal belongings on the Property and estimated the fair market value by looking at Craigslist ads. Ms. Schnurr testified she did not have receipts for these items because all her papers were thrown away. She did not suggest her furnishings were of great value, but they had some value, and disagreed they were of little value. Ms. Schnurr was most upset that irreplaceable personal papers and pictures of her four children were gone. Ms. Schnurr filed several pictures which show the house was furnished, and other pictures showing items of furniture that were later stored outside in a carport.

[141] Ms. Schnurr read in examination for discovery evidence of Ms. Baldwin where Ms. Baldwin admitted that she had two disposal units come to the Property to clean up the Property and dispose of some furnishings. Ms. Baldwin said Ms. Schnurr's personal belongings were left in the shed. The only item Ms. Schnurr received from Ms. Baldwin was a back pack with three broken laptops and a few papers. Ms. Schnurr denied seeing a letter sent by Ms. Baldwin's counsel to her counsel dated September 14, 2007, and advising that Ms. Schnurr had items at the Property and asking if she wanted them.

[142] Ms. Schnurr's daughter, Ms. Dayna Pollard, testified. She described Ms. Schnurr's renovations to the Property and said the house was "pretty much completely furnished". Sometime after the court order on August 31, 2017 she received a phone call from Ms. Baldwin who wanted Ms. Schnurr's belongings picked up. Ms. Pollard and her brother went

to the Property and all that was there were two backpacks with computers in them and random pieces of paper. This was not the same computer her mother had in the shed. Everything in the Property was cleaned out. She was cross-examined on the condition of the furnishings in the house. The house smelled like mildew.

- [143] Ms. Baldwin testified that between March and August 2017 she had asked Ms. Schnurr to move her belongings. After she obtained the court order she knew Ms. Schnurr still had belongings on the Property. She asked Mr. Escola if he would pick up Ms. Schnurr's belongings as she knew he was getting a trailer to move. She instructed her lawyer to send a letter in September to Ms. Schnurr's lawyer asking her to make arrangements to remove her belongings. She contacted Ms. Schnurr's son Kyle and said she found personal items and photos, documents and mail. She put those aside with laptop computers. She put them in a backpack and left them in a corner of the shed. She did not receive any further contact from Ms. Schnurr or her family regarding items requested.
- [144] Ms. Baldwin said she had to clean up the Property to sell it. She hired labourers and it cost at least \$3000. She described an unsanitary condition. Ms. Baldwin does recall there was a TV. She said she did not sell or throw it out. She assumed Ms. Schnurr or her children took it. As for the furniture on the Property, she said the labourers threw out things that were filthy, moldy or smelled. She described the furniture as being in poor condition. In cross-examination she was shown pictures, for example of a TV, bookcases and an electric fireplace. She agreed if items such as the TV and fireplace worked, they were not junk. She agreed there was a bed in the loft, but did not know its condition. There was mold in the house. She agreed there was a dining room table, chairs, red couches and a leather chair. She said the red couches were in poor condition.

Sale of the Property and Mr. William Ray's evidence

- [145] Mr. Peters originally listed the property at \$449,999 after talking with other realtors and looking at comparable properties. Mr. William Ray made an offer at \$275,000 and Mr. Peters gave it to Ms. Baldwin to accept or not. Mr. Peters heard rumblings of other offers, but never received another offer. He was not Mr. Ray's realtor. Mr. Ray's offer was accepted by Ms. Baldwin.
- [146] Ms. Schnurr subpoenaed Mr. Ray as a witness on the second day of trial. One of the areas of questioning was his relationship with the parties. Ms. Schnurr seemed to believe Mr. Ray and Ms. Baldwin had conspired together to take the Property from her. Mr. Ray testified he knew nothing about the dispute between Ms. Schnurr and Ms. Baldwin until two or three days after he purchased the Property. He did not know either of the parties, nor any relatives of Ms. Baldwin. He does not own the Property in trust for anyone. He met Ms. Baldwin about three months after he purchased the Property and the next time he saw her was the day he testified. He met Ms. Schnurr when she came to the Property about two weeks after he bought the Property and she gave him a letter stating her position that the Property was hers and she would be asking to have it put back in her name. He said Ms.

Schnurr was adamant his ownership was only temporary. He saw Ms. Schnurr several more times until he told her to stop.

[147] Mr. Ray owns a company with heavy equipment that demolishes large buildings such as high rises, libraries and convention centres. He has done this work for 30 years. He was thinking of retirement and wanted acreage. He saw the Property had been reduced in price. After he saw the landslide, he was going to offer \$200,000. He made an offer to purchase for \$275,000 which he described as a steal, but only for someone with his expertise and the equipment to do something about the landslide and creek. He did not agree that the creek on the Property was not a risk for a landslide. The offer was quickly accepted by Ms. Baldwin. The signed offer is dated January 22, 2018.

[148] Mr. Ray testified it would have been obvious to anyone that considerable work was required to the Property. The District made him aware that anyone who bought the Property would be required to obtain a geotechnical report. In the first two weeks after he purchased the Property he did about \$25,000 worth of work on the creek, until the District notified him he had to stop. Mr. Ray described the difficulties he has had in trying to address the landslide and creek with the District and the Ministry of Environment. Mr. Ray estimated he has put over \$150,000 of work into the Property in terms of out-of-pocket expenses and the value of the work he was able to do himself because he has the heavy equipment required. He can do work at a fraction of the cost someone without the equipment would have to pay. The work is not finished. He still needs geotechnical approval. He expects to spend thousands more to rehabilitate the Property. He is not yet free to move in to the Property. After he did all this work, he received an offer to purchase the Property for \$425,000.

[149] I pause to note one other event concerning Mr. Ray. On day four of the trial, after a four month adjournment, Ms. Schnurr brought an application to add Mr. Ray as a party to this action and to amend her notice of civil claim on the theory that Mr. Ray and Ms. Baldwin had conspired to sell him the Property at a reduced price. Ms. Schnurr had no expert evidence of the value of the Property. Although he was not given adequate notice, Mr. Ray attended trial again on that day. I dismissed the application and awarded Mr. Ray costs.

Findings of fact

[150] I make the following findings of fact.

[151] Ms. Schnurr did not remove her personal belongings from the house after Ms. Nygard and Mr. Girard rented the house for March 1, 2017. These tenants were forced to remove Ms. Schnurr's items and clean what was a messy and unsanitary room at their own cost. Ms. Schnurr's actions, in not removing her belongings, and in permitting Mr. Escola to move his trailer onto the Property, contributed to the tenants' unease in renting the house, and disturbed their peaceful enjoyment of the house. Ms. Schnurr's actions were the cause of Ms. Nygard and Mr. Girard terminating their tenancy, and the loss of rental revenue until the Property was sold.

- [152] Ms. Baldwin acted reasonably in not agreeing to rent the Property to Mr. Escola, who was friendly with Ms. Schnurr and had been living at the Property rent-free for three months. Given that Ms. Baldwin had obtained an order for conduct of sale of the Property, the need to clean up the Property, and her hope for an early sale, Ms. Baldwin acted in reasonably in not renting the Property.
- [153] Ms. Baldwin was responsible for the internet and electrical being disrupted to the shed, making it difficult for Ms. Schnurr to reside on the Property in the shed.
- [154] Ms. Baldwin used the February 2016 P/S Agreement at the RTB and stapled it to the unrelated Revised Order to Pay from the September 2016 transfer.
- [155] Mr. Justice Brown found that the sale of the Property was both necessary and expedient. He did not rule on the dispute between the parties.
- [156] On September 14, 2017 Ms. Baldwin's counsel sent a letter to Ms. Schnurr's counsel asking if Ms. Schnurr wanted her personal items on the Property. There was no response to that letter. Ms. Baldwin hired labourers and disposed of Ms. Schnurr's personal property without advising Ms. Schnurr or her counsel that she was about to do this.

Did Ms. Baldwin hold title to the Property pursuant to an express or resulting trust?

- [157] In the relief sought in the amended notice of civil claim, Ms. Schnurr refers only to a resulting trust and not an express trust, although in the facts section she refers to an agreement to hold the Property in trust, and in the legal basis section she again refers to an agreement to hold the Property in trust. During argument, the scope of the pleadings was raised by both parties. Ms. Baldwin's counsel very properly agreed that Ms. Schnurr's pleadings are wide enough to encompass both, he had questioned Ms. Schnurr regarding an express trust, he thought the alleged facts fit more appropriately into an issue of whether there was an express trust, he was not prejudiced by such an allegation, and he was not surprised that Ms. Schnurr was relying upon Bradshaw which concerned an express trust. As a result, I have considered both forms of trust.
- [158] Section 23(2) of the Land Title Act, R.S.B.C. 1996 c. 250, provides that an indefeasible title is, subject to certain exceptions, conclusive proof that the person named in the title as registered owner is indefeasibly entitled to an estate in fee simple. The subsection states:
- (2) An indefeasible title, as long as it remains in force and uncanceled, is conclusive evidence at law and in equity, as against the Crown and all other persons, that the person named in the title as registered owner is indefeasibly entitled to an estate in fee simple to the land described in the indefeasible title, subject to the following:
- [159] The sub-section creates a presumption that the registered title accurately reflects a party's actual ownership interest: *Mac v. Mak*, 2016 BCSC 1140 at para. 107, *aff'd* 2017 BCCA 115.

[160] In *Suen v. Suen*, 2013 BCCA 313, the Court discussed situations in which the statutory presumption of indefeasible title may be rebutted:

[34] The central issue to be determined by the trial judge was whether the statutory presumption of indefeasible title as to the joint ownership of Capstan Way was rebutted by either of the parties. This Court has endorsed three considerations for determining this issue:

- (i) the operation of a resulting trust which may be inferred where no value is given for a legal interest;
- (ii) the operation of an agreement between the parties that is contrary to the registered legal title; or
- (iii) taking into account the underlying equitable interests between the parties (e.g., considerations that arise in claims for unjust enrichment).

See *Bajwa v. Pannu*, 2007 BCCA 260, paras. 12-14, 18, and 23; and *Aujila v. Kaila*, 2010 BCSC 1739, paras. 31-36.

[161] The Court went on to review the law with respect to each of the foregoing categories.

Express trust

[162] With respect to an express trust, the Court in *Suen* stated at para. 45:

[45] An express trust is created when the requirements of certainty of intention, subject, and objects of the transfer have been established and the trust property has been vested in the trustee: *Waters* at 132 and 167.

[163] In *Bradshaw (C.A.)* at para. 135, the Court approved of the trial judge's discussion of express trust:

[135] The trial judge stated the law of trusts and applied it as follows:

[199] A trust is created intentionally by a person where she transfers legal title to a property and uses words that indicate that the transferee is to hold title for the benefit of the beneficiary. It is well established that for a trust to be created, there must be certainty of intention, certainty of subject matter, and certainty of beneficiaries/objects (see D.W.M. *Waters*, M.R. Gillen and L.D. Smith, eds., *Waters' Law of Trusts in Canada*, (3rd ed. 2005), at 132) (*Waters*)). In this case, there is no controversy about the applicable law, but only whether a trust is established on the facts.

[200] Certainty of subject matter and object is readily dealt with. The Peachland property is the subject matter of the trust. The object of the trust was to preserve Lori's beneficial ownership in the property and to re-mortgage it for her benefit. This object is similar to that in *Fleck v. Stewart* (1991) 80 Alta. L.R. (2d) 334 (Alta. Q.B.), to transfer a house for the purpose of obtaining financing. A trust was declared in that case even though the parties did not specifically express that the house was to be held by the plaintiff in trust.

- [201] Certainty of intention refers to the clear communication that the settlor intends that the recipient hold the subject matter in trust (Waters at 132). In *Sutherland Estate v. Nicoll Estate*, [1944] S.C.R. 253 at 263, Kerwin J. said that it is necessary to show that the communication was clear and that it was made in circumstances in which an obligation was imposed upon and accepted by the trustee. Newbury J. (as she then was) said in *Bank of Montreal v. British Columbia Milk Marketing Board* (1994), 94 B.C.L.R. (2d) 281 (B.C.S.C.), [1994] B.C.J. No. 1606 at para. 10: "there must be sufficient evidence of an intention on the payor's part that the funds or property received by the trustee are not to become part of his own property but are to be or remain the property of the beneficiary." If an alleged settlor clearly says that certain property is to be held on trust, then an express trust is created (*Gill v. Grant* (1988), 30 E.T.R. 255, [1988] B.C.J. No. 1705 (B.C.S.C.)).
- [202] In this case, it is accepted that Lori [Bradshaw] stated that the transferee was to take title to the property "on paper" in execution of the plan as described. There is no need for Lori to have used technical words or expressions when the trust was created (*Brown v. Storoschuk* (1946), 3 W.W.R. 641 at 652 (B.C.C.A.)). The transfer was for the specific purpose of ending the foreclosure, with the plan for Lori to pay for the property until she could assume another mortgage. This special purpose impressed the property with a trust and Peachland never became the property of Kimberley [Stenner].
- [164] Has Ms. Schnurr established an express trust? The onus of establishing an express trust is on Ms. Schnurr.
- [165] Ms. Baldwin argues that there was a lack of certainty of intention. She argues there was no proof of consensus on the specific terms, and refers to *Suen* where the court rejected an express trust on that basis. Ms. Schnurr acknowledged there were a lot of "moving parts", and that it was never discussed at what cost Ms. Baldwin would re-convey the Property back to Ms. Schnur, when that would be, or what would happen if there was a change in value.
- [166] As I have accepted most of Ms. Schnurr's evidence with respect to the agreement, I find that except for the \$10,000 interest of Ms. Baldwin, Ms. Schnurr has proven an express trust over the Property (which is now the proceeds from the sale of the Property) for the benefit of Ms. Schnurr. I find there was certainty of subject (the Property) and certainty of the object/beneficiary (Ms. Schnurr). I find there was also certainty of intention, being two transfers of interests in the Property for the purpose of securing a conventional mortgage using Ms. Schnurr's equity for the benefit of Ms. Schnurr and Ms. Baldwin. I find this was Ms. Schnurr's stated intention and Ms. Baldwin was aware of and agreed to this.
- [167] I acknowledge the agreement between the parties was amended as the parties realized Ms. Baldwin would have to be the sole owner on title to obtain the mortgage. The express trust for the first one-half transfer (less the \$10,000 interest) crystallized at the point of transfer, and the trust for the remaining one-half interest crystallized at time of that transfer. I agree there was no discussion of the cost of re-conveying the Property and what would happen if there was a change in value. I find that does not create ambiguity, because Ms. Baldwin

never had an equitable interest (other than the \$10,000 interest), accepted no real risk with respect to the Property because there was sufficient equity to pay the mortgage, and had gained a significant benefit, being the payment of her credit card and line of credit debt. As a result, Ms. Baldwin would not bear the burden of any decrease in the value of the Property, or share in the benefit of any increase in the value. As to when the Property would be re-conveyed, although an exact date was not stipulated, it would have been impossible to state a date. The understanding between the parties was this would take place as soon as Ms. Schnurr or her son were in a financial position to do so. It is clear that they both envisioned this would be relatively quickly as Ms. Baldwin was asking about it as early as March 2017.

[168] Ms. Baldwin alleges that Ms. Schnurr's alleged agreement does not comply with s. 59(3) of the Law and Equity Act, R.S.B.C. 1996, c. 253, which requires certain contracts concerning the disposition of land to be in writing. I do not accede to this argument. The Form A transfers were in writing, and parol evidence is admissible to establish an verbal trust regarding land: Bradshaw at paras. 132, 134 and 153.

Resulting trust

[169] With respect to a resulting trust, the Court in Suen stated at para. 35:

[35] The presumption of resulting trust is engaged where an owner of property has gratuitously transferred title to the property to another. In Pecore, Mr. Justice Rothstein, writing for the Court, explained the concept of a resulting trust at para. 20:

A resulting trust arises when title to property is in one party's name, but that party, because he or she is a fiduciary or gave no value for the property, is under an obligation to return it to the original title owner: see D.W.M. Waters, M.R. Gillen and L.D. Smith, eds., *Waters' Law of Trusts in Canada* (3rd ed. 2005), at p. 362. While the trustee almost always has the legal title, in exceptional circumstances it is also possible that the trustee has equitable title: see *Waters' Law of Trusts*, at p. 365, noting the case of *Carter v. Carter* (1969), 70 W.W.R. 237 (B.C.S.C.).

[36] A gratuitous transfer of property from one party to another is fundamental to the presumption of a resulting trust. In *Kerr v. Baranow*, 2011 SCC 10, Mr. Justice Cromwell, for the Court, wrote:

[17] Resulting trusts arising from gratuitous transfers are the ones relevant to domestic situations. The traditional view was they arose in two types of situations: the gratuitous transfer of property from one partner to the other, and the joint contribution by two partners to the acquisition of property, title to which is in the name of only one of them. In either case, the transfer is gratuitous, in the first case because there was no consideration for the transfer of the property, and in the second case because there was no consideration for the contribution to the acquisition of the property.

- [18] The Court's most recent decision in relation to resulting trusts is consistent with the view that, in these gratuitous transfer situations, the actual intention of the grantor is the governing consideration: *Pecore v. Pecore*, 2007 SCC 17, [2007] 1 S.C.R. 795, at paras. 43-44. As Rothstein J. noted at para. 44 of *Pecore*, where a gratuitous transfer is being challenged, "[t]he trial judge will commence his or her inquiry with the applicable presumption and will weigh all of the evidence in an attempt to ascertain, on a balance of probabilities, the transferor's actual intention" (emphasis added [by Cromwell J.]).
- [19] As noted by Rothstein J. in this passage, presumptions may come into play when dealing with gratuitous transfers. The law generally presumes that the grantor intended to create a trust, rather than to make a gift, and so the presumption of resulting trust will often operate. As Rothstein J. explained, a presumption of a resulting trust is the general rule that applies to gratuitous transfers. When such a transfer is made, the onus will be on the person receiving the transfer to demonstrate that a gift was intended. Otherwise, the transferee holds the property in trust for the transferor. This presumption rests on the principle that equity presumes bargains and not gifts (*Pecore*, at para. 24).
- [37] The imposition of a resulting trust does not require proof of intention, but rather it is a legal doctrine that is imposed, "to return property to the person who gave it and is entitled to it beneficially, from someone else who has title to it. Thus, the beneficial interest 'results' (jumps back) to the true owner": Oosterhoff, [Oosterhoff on Trusts: Text, Commentary and Materials, 7th ed. (Toronto, Carswell, 2009)] at p. 25" (Kerr at para. 16). It may also arise where a claimant seeks, "the recognition of his or her proportionate interest in the asset which the other has acquired with [his or her] property" (para. 25).
- [38] The onus of proof is on the party seeking to rebut the presumption of resulting trust, i.e., the transferee. In *Pecore*, the Supreme Court of Canada confirmed that when a transfer is challenged (as having been made for no consideration), "the onus is placed on the transferee to demonstrate that a gift was intended: see *Waters, Gillen and Smith*, *Waters' Law of Trusts* at p. 375, [Waters] and E.E. Gillese and M. Milczynski, *The Law of Trusts* (2nd ed. 2005), at p. 110. This is so because equity presumes bargains, not gifts" (para 24).
- [170] If property is transferred for consideration, a resulting trust does not arise. Whether value was given is a question of fact to be determined on the evidence in each case: *Bajwa v. Pannu*, 2007 BCCA 260 [Bajwa] at para. 16.
- [171] If I am in error in concluding that the agreement between the parties was an express trust because of a lack of certainty of intention, were the two transfers gratuitous? The onus of establishing there was no consideration is on Ms. Schnurr. If Ms. Schnurr is successful in establishing no consideration for one or both of the transfers, then there is a presumption of a resulting trust. As Ms. Baldwin does not allege a gift to rebut any presumption of a resulting trust, the issue of whether there was a resulting trust turns on whether there was consideration for the transfer.

- [172] Ms. Baldwin argues there was consideration and points to her work on the Property between 2012 and 2015, the \$10,000 loan, and the fact that she was legally responsible for the mortgage which was a substantial sum of money. I have already found that the work she did between 2012 and 2015 was minimal and consistent with friendship, not ownership, and need not address that further. I agree there was consideration for a \$10,000 interest. The issue is whether there was consideration for the remaining interest in the Property.
- [173] Ms. Baldwin refers to *Bajwa*, which was an appeal of a summary trial in which the court upheld the presumption in s. 23(2) of the Land Title Act. In my view, the case is distinguishable for two reasons. First, Mr. Pannu, Ms. Virk and her mother were on title, each one third. Ms. Virk and her mother "relied almost exclusively on the fact that they paid all of the \$35,000 down payment and Mr. Pannu paid nothing" to rebut the presumption in s. 23(2) in favour of Mr. Pannu's ownership of the Property. The court noted this argument ignored that Mr. Pannu contributed in other significant ways at the time of purchase, when the equity in the Property was only \$35,000, and concluded that Mr. Pannu's contribution was at least equal to that of the other two registered owners (para. 13). Second, the trial judge did not make a factual determination regarding any agreement between the parties, but focused on the statutory presumption. The Court found that the trial judge assumed, without deciding, that there was no express agreement as alleged by Mr. Pannu. In this case, I have made findings regarding the agreement between the parties, and I find there was an agreement, largely on the terms consistent with Ms. Schnurr's evidence.
- [174] Ms. Baldwin also refers to *Aujla v. Kaila*, 2010 BCSC 1739, where two transfers of property were in issue. In my view, the case does not assist Ms. Baldwin as it turns on the findings of fact by the trial judge. The plaintiff's interest in the property at issue was transferred to her mother, and her mother re-mortgaged the property to pay the plaintiff's car loan. The trial judge found there was consideration because the mother assumed sole legal responsibility for the new mortgage, relieving the daughter as a covenantor under the pre-existing mortgage, and the mother made all the monthly mortgage payments.
- [175] Ms. Schnurr refers to *Wachter v. Carlson*, 2012 BCSC 1390 [Wachter], which involved a gratuitous transfer to a daughter and son in-law for the purpose of obtaining a mortgage for their parents. Like this case, the parents were responsible for making the payments and upkeep of the property. The daughter and son in-law argued there could not be a resulting trust because they gave value. They accepted responsibility for the mortgage and their borrowing capacity was reduced. The court found the reduction in borrowing capacity was not proven, and that the equity in the home was "amply secured with little or no risk to the daughter and son-in law" and this did not preclude the finding of a resulting trust.
- [176] I find that except for the \$10,000 interest in the June 2016 Transfer Document, the two transfers of the interest above that amount were gratuitous, and if there is no express trust, that Ms. Schnurr has established a resulting trust with respect to the Property (which is now the proceeds from the sale of the Property). I find Ms. Baldwin did not provide any consideration for the transfers above an interest to the value of \$10,000. Like in *Wachter*, as

between themselves, Ms. Schnurr assumed all responsibility for the mortgage and all other expenses associated with the Property. Given the equity in the Property, while Ms. Baldwin was legally responsible for the mortgage, the risk to her was essentially nil. Further, Ms. Baldwin actually received a net benefit by having her personal debt paid. In my view, in all the circumstances of this case, Ms. Baldwin's legal responsibility to potentially be called on to pay the mortgage does not preclude finding the transfers (above the \$10,000 interest) were gratuitous with the corresponding presumption of a resulting trust. Ms. Baldwin has not rebutted the presumption of a resulting trust.

Has Ms. Baldwin been unjustly enriched?

[177] In *Wachter*, the court discussed the elements of unjust enrichment:

[59] The concepts of unjust enrichment and resulting trust are discussed in *Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 269. The determination of whether there has been unjust enrichment requires findings to the following questions:

- a) Have the Carlsons, as defendants, been enriched?
- b) Have the Wachters, as plaintiffs, suffered a deprivation?
- c) Is there no reason in law or justice for the Carlsons' retention of the benefit conferred by the Wachters?

[62] In *Kerr*, Cromwell J., writing for the court, states:

[40] The third element of an unjust enrichment claim is that the benefit and corresponding detriment must have occurred without a juristic reason. To put it simply, this means that there is no reason in law or justice for the defendant's retention of the benefit conferred by the plaintiff, making its retention "unjust" in the circumstances of the case: ...

[63] In this action, the Wachters say there is no legal reason to justify the enrichment of the Carlsons by allowing them to retain title to the Vernon home. The Wachters submit that such an enrichment would be contrary to the terms of the arrangement made between the parties. I concluded earlier in these reasons that the Carlsons took title to the property simply in order to obtain a mortgage necessary for the Wachters to complete the purchase of the property. The terms further provided that the Wachters would be responsible for the payments due monthly on the mortgage as well as legal fees, insurance costs, municipal taxes and services, and the costs of maintenance and improvements which the Wachters performed on the property. The agreement I found also anticipated the subsequent transfer from the Carlsons to the Wachters of the title to the property.

[64] I conclude that given the agreement which I found to have been entered into between the parties that the Carlsons would be unjustly enriched were they permitted to retain title in the Vernon home.

[178] In this case, Ms. Schnurr has suffered a detriment, the loss of title to the Property, and Ms. Baldwin has gained a benefit, being title of the Property in her name, and now the equity being the funds in her counsel's trust account. Given the findings I have made with respect to the agreement between the parties, and its purpose, there is no juristic reason for the benefit above the \$10,000 interest.

[179] Similar to the court's decision in Wachter, in my view Ms. Baldwin would be unjustly enriched were she permitted to retain the equity (above the \$10,000) from the Property.

[180] Ms. Schnurr also claims Ms. Baldwin has been unjustly enriched by the approximate \$15,000 net benefit Ms. Baldwin received from payment of her credit card and line of credit debt after the original \$10,000 loan is taken into account. I do not accede to this argument. There is a juristic reason for this benefit and it is Ms. Schnurr's agreement to subsume this debt into the mortgage amount, and as between the parties, to be personally responsible for that debt. The Property was sold after Ms. Schnurr was not able to fulfil her agreement to pay the mortgage and other expenses. I dismiss Ms. Schnurr's claim against Ms. Baldwin for return of this sum.

Did Ms. Baldwin unlawfully dispose of Ms. Schnurr's belongings?

[181] Ms. Schnurr's claim that Ms. Baldwin disposed of her personal belongings is an action for conversion. The elements of a claim for conversion are discussed in G.H.L. Fridman, *The Law of Torts in Canada*, 2nd ed. (Toronto: Carswell, 2002) at page 136:

The essential features of the tort of conversion [are]: (i) a wrongful act; (ii) involving a chattel; (iii) consisting of handling, disposing or destruction of the chattel; (iv) with the intention or effect of denying or negating the title of another person to such chattel.

[182] In Lewis Klar, *Remedies in Tort* (Toronto: Carswell, 2020) at 4.II.4(a), the author states of the tort of conversion:

The plaintiff must show some deliberate act of interference or dealing with the chattel which is inconsistent with or repudiates the plaintiff's right to the chattel. The defendant's conduct must be intentional. That intention is conclusively proved if the defendant has taken and used the goods as his own.

[183] The onus is on Ms. Schnurr. The criteria in (ii) to (iv) are met. Was this a wrongful act? In my view Ms. Baldwin's disposal of Ms. Schnurr's goods was an intentional wrongful act and Ms. Schnurr has established that Ms. Baldwin converted Ms. Schnurr's personal belongings. There was only evidence of one letter written to Ms. Schnurr's counsel, which Ms. Schnurr said she did not receive, which asked if she was interested in her personal items at the Property. There was no warning that Ms. Schnurr was about to dispose of them, or that unless Ms. Schnurr responded within a certain time, she would do so. In all the circumstances, I find Ms. Baldwin intentionally disposed of Ms. Schnurr's belongings and that this was wrongful. Ms. Baldwin should have done more, such as contacting Ms. Schnurr and letting her know that a disposal company would be hired and that if she did

not remove her belongings by a certain day, they would be disposed of.

[184] Very few of the items in Ms. Schnurr's list of items are seen in the photos. It is not reasonable to expect her to have kept receipts for many of the small items claimed, so I do not discount the claim on that basis. The pictures of items stored in the carport do not appear to be of significant value. One item of commercial value, a log-splitter, was retrieved by Ms. Schnurr. Most of the values assigned in Ms. Schnurr's list are likely more than the fair market value, for example nursing text books. Some items claimed appear to be at new price. For some, it is not clear why they would be in the house, for example, Ms. Schnurr's clothes and vaping products. In the circumstances, I have considered the pictures, Ms. Schnurr's testimony regarding the items, the amount claimed for each individual item, and the fact that Ms. Schnurr was also sometimes living in Greenwood, and on admittedly thin but some evidence, assessed the loss at \$12,000, payable by Ms. Baldwin to Ms. Schnurr.

Did Ms. Schnurr trespass on the Property and convert rental income?

[185] As I find that Ms. Baldwin was holding the Property in trust for Ms. Schnurr except as to Ms. Baldwin's \$10,000 interest in the Property, Ms. Schnurr did not trespass on the Property. As Mr. Escola was permitted to reside on the Property by Ms. Schnurr, there is no further trespass by Mr. Escola.

[186] Ms. Schnurr did not remit the April 2017 rental income. I find she therefore converted that month's rent. Ms. Schnurr was the cause of the lost rental income for four months from September 1, 2017 to January 1, 2018. Pursuant to the verbal trust agreement, the rental income would have been used to pay the expenses of the Property, including the mortgage payment. Instead, Ms. Baldwin paid those costs. As the evidence was that the rent should have covered those expenses, I assess this as a loss to Ms. Baldwin of \$4800. In addition, Ms. Baldwin had to expend just over \$1016 to pay the overdraft at the Scotiabank. The total is \$7016 payable by Ms. Schnurr to Ms. Baldwin.

Orders

[187] The proceeds of the sale of the Property are held in the trust account of Ms. Baldwin's lawyer. Those funds represent the equity in the Property. I declare that Ms. Schnurr is the beneficial owner of those funds except for the amount of \$10,000 of which Ms. Baldwin is the beneficial owner, and subject to the orders I make below.

[188] The sums payable for the conversion and lost rental claims must be taken into account. Ms. Baldwin is liable to Ms. Schnurr for \$12,000 for the conversion of Ms. Schnurr's personal property. Ms. Schnurr is liable to Ms. Baldwin for \$7016 for the payment of the overdraft and the converted and lost rent. With the \$10,000 interest in the Property, that leaves a credit to Ms. Baldwin of \$17,016. The net result is a credit in the amount of \$5016 to Ms. Baldwin.

- [189] Although Ms. Schnurr pleaded punitive damages in her amended notice of civil claim, she made no submissions seeking punitive damages in closing argument. I therefore decline to consider this head of damage.
- [190] Ms. Schnurr has been successful in this action. The counterclaim took little time at trial. Ms. Baldwin counterclaim was unsuccessful with respect to trespass but successful with respect to the overdraft and rental income. In all the circumstances, I decline to award either party costs of the counterclaim.
- [191] Unless there have been settlement offers which would affect the award of costs of the main action, Ms. Schnurr is entitled to her costs of that action at Scale B. Ms. Schnurr's costs will undoubtedly be greater than Ms. Baldwin's \$5016 credit and I order that within 30 days the entirety of the funds held in trust be paid to Ms. Schnurr, and that the sum of \$5016 may be applied as a set-off to the amount found owing to Ms. Schnurr as costs. If the parties do have submissions to make on costs, they may do so by written submissions of no more than five pages in total each, submitted through Trial Scheduling, with the applicant providing submissions within two weeks, response submissions within a week following that, and any reply submissions within another week following that.

"Norell J."

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