

CANADA / JUDGMENT

Skinner v. Naraine

2026 BCSC 331

COURT

Supreme Court of British Columbia

DECIDED

15 January 2026

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2026 BCSC 331 Skinner v. Naraine

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Skinner v. Naraine,

2026 BCSC 331

Date: 20260115

Docket: E56536

Registry: New Westminster

Between:

Erica Joan Skinner

Claimant

And

Michael Andrew Naraine

Respondent

Before: The Honourable Justice Whately

Oral Reasons for Judgment

Counsel for the Claimant:

S.J. Bobb

Counsel for the Respondent:

M.R. Epstein

Place and Date of Trial:

New Westminster, B.C.

October 20-24, 2025

Place and Date of Judgment:

New Westminster, B.C.

January 15, 2026

[1] THE COURT (by videoconference): This is my decision in the trial of Erica Joan Skinner versus Michael Andrew Naraine, which I heard in October of 2025. I am giving this decision orally. If a transcript is ordered, I will edit for typographical errors, organization, clarity and I will include fulsome case cites or quotes that I may not read out loud today in the interests of time.

Introduction

- [2] This trial involves the breakdown of a nine-year domestic partnership between the claimant, Erica Skinner, and the respondent, Michael Naraine. Ms. Skinner is currently 43 years old. She was formerly an Aboriginal outreach and support worker. She is currently designated as a person with a disability and receives disability benefits. Mr. Naraine is 48 years old and is a draftsman with BC Hydro.
- [3] The parties began living together in 2008 and separated in April of 2017. The parties remained living in the same dwelling for some months after their relationship broke down. There are no children involved in this matter.
- [4] The central issue before me is whether I should set aside a separation agreement dated August 21, 2017, which I will refer to as "the Agreement", pursuant to ss. 93 and 164 of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. The Agreement purports to settle claims arising from the relationship, including property division and spousal support.
- [5] The claimant, Ms. Skinner, states that the Agreement should be set aside. If I set aside the Agreement, Ms. Skinner asks that I divide the family property in accordance with the provisions of the FLA, and further seeks an unequal division of the primary family asset, a condominium, in her favour.
- [6] The respondent, Mr. Naraine, says that the Agreement between the parties should be upheld. If the respondent is successful, under the terms of the Agreement, Ms. Skinner would receive the remainder of a specified cash payout, which is \$19,908. This payout was meant to represent Ms. Skinner's interest in, or her contribution to, the parties' condominium less her share of all related debts, as calculated at the time the parties entered into the Agreement.

[7] For the reasons that follow, I have determined that the Agreement will be set aside.

The Circumstances of the Relationship

- [8] As outlined in Mr. Naraine's amended pleadings, and as it appeared at the outset of the trial at least through to the end of the cross-examination of Ms. Skinner, Mr. Naraine intended to advance an argument that there was no marriage-like relationship between himself and Ms. Skinner, and that they were instead merely roommates.
- [9] Wisely, this position was not pressed in closing arguments as it was not supportable by the facts. However, some remnants of this position remained in Mr. Naraine's written submissions, which suggested, somewhat vaguely, that because the future was uncertain, the parties did not consider themselves "married-like" and that they had, in certain respects, more of a "business relationship."
- [10] For her part, Ms. Skinner vehemently denied that she and Mr. Naraine were "roommates" or in a "business relationship" and strongly communicated that she found this characterization both disrespectful and disingenuous.
- [11] Mr. Naraine's own testimony confirmed that this was not an accurate characterization of the relationship. Putting aside what was agreed to or assumed by the parties about their financial arrangements as a couple, in my view there was no air of reality to this position.
- [12] I find that the evidence was clear that the parties were in a marriage-like relationship, regardless of the way they managed their finances, or because the relationship became dysfunctional over time.
- [13] Barring any relevance to the narrow issues before me, I do not intend to review the evidence regarding the ups and downs of the parties' relationship in detail, nor do I intend to review the specific circumstances surrounding its breakdown. The parties had problems. Like many couples, they suffered from a lack of communication about many issues, including finances. They experienced tensions within their extended families. They fought, and each party had complaints about the habits or conduct of the other. Both parties behaved poorly on occasion.
- [14] They did not regularly or specifically articulate their mutual or individual plans for the future, outside of continuing to live together over the span of years. It can be presumed, and Ms. Skinner certainly believed, that by getting engaged, they planned to get married one day. The fact that their partnership became dysfunctional and ended does not negate the fact that the partnership existed.
- [15] For clarity, should any doubt remain on this point, I find as a fact that from 2008 through April of 2017, the parties were in a marriage-like relationship while cohabiting together. I relied on the following undisputed facts in support of this conclusion:
- a) The parties began dating in 2007 and moved in together in 2008.

- b) The parties lived together as a couple from 2008, through the purchase of a condominium together as joint tenants in 2016, until they separated in April 2017.
 - c) The parties moved together to various different dwellings during the course of their relationship.
 - d) The parties had a physically intimate relationship. Both parties testified as to their love and care for the other during the course of their relationship.
 - e) Mr. Naraine proposed marriage to Ms. Skinner and gave her an engagement ring in the summer of 2014. Ms. Skinner wore the ring until the relationship ended in 2017.
 - f) The parties presented to friends and family as romantic partners. It was known to friends and family that they lived together, were a couple and became engaged.
- [16] These factors are indicators of a marriage-like relationship: see *Armstrong v. Scholz*, 2022 BCSC 863.
- [17] Based on my finding that the parties were in a marriage-like relationship until April 2017, I also reject any argument that the parties were not in a marriage-like relationship within two years of Ms. Skinner filing her family law claim. Ms. Skinner filed her claim in November of 2018.
- [18] For clarity, I dismiss the respondent's claim that Ms. Skinner's family law claim was statute barred. In my view, neither of these claims ought to have been pursued, even considering that they were largely abandoned part way through trial. Doing so was a waste of the parties' and the court's time.
- [19] I did not find the evidence regarding the parties' financial arrangements in any way negated the fact that they were in a marriage-like relationship.
- [20] That said, the dispute between the parties concerns various expectations and agreements regarding their finances generally during their relationship, and specifically with respect to the purchase of the parties' condominium. This is relevant to interpreting the circumstances surrounding the Agreement, and the intent of the parties with respect to all parts of the Agreement. Evidence pertaining to the parties' finances and other aspects of their relationship dynamic will be reviewed in this context.

The Parties' Finances and the Purchase of the Property

- [21] When the parties began dating in 2007, Ms. Skinner was a live-in nanny and Mr. Naraine was already established in his career at BC Hydro. One of the precipitating events that contributed to the parties' decision to live together in 2008 was that Ms. Skinner obtained different employment and needed accommodation. The evidence of Ms. Skinner and Mr. Naraine differed in terms of why Ms. Skinner changed jobs, whether it was because of Mr. Naraine's encouragement, or to what extent this change precipitated or contributed to the decision to live together. However, I do not need to resolve this dispute.

- [22] The parties moved in together in May of 2008, with Ms. Skinner moving in with Mr. Naraine and his two roommates. Rent was split four ways between Mr. Naraine, Ms. Skinner, and the roommates. Ms. Skinner stayed in Mr. Naraine's room.
- [23] The parties agree that, for the most part, from the beginning they shared their living expenses equally. They did not have joint bank accounts or credit cards. Ms. Skinner would occasionally borrow small amounts of money from Mr. Naraine but she would always pay him back. They would alternate paying for their weekly date nights. They bought each other gifts on special occasions. Ms. Skinner often spent more on household furnishings and amenities because she said Mr. Naraine did not like to spend money on comforts, but she recalled that he certainly enjoyed having them when she purchased them.
- [24] As the relationship developed over time and the parties moved as a couple to different homes together, the parties continued to manage their own debts and paid for their own expenses. Joint expenses like rent, groceries, and utilities were split relatively evenly. Mr. Naraine did cosign for a vehicle for Ms. Skinner in 2016. That was one of the few exceptions to their general rule that they managed their own expenses and debts.
- [25] Ms. Skinner testified that Mr. Naraine was relatively close-lipped about his work and his finances. She also stated that they rarely, if ever, spoke about future plans, even after Mr. Naraine proposed. Even though Mr. Naraine planned and executed the proposal, Ms. Skinner later found it very difficult to get Mr. Naraine to talk about planning the wedding.
- [26] Mr. Naraine made a specific point of introducing evidence about how the parties filed separate tax returns, and that the parties did not indicate they were common law on those returns. It became clear during testimony that neither party particularly understood the legal meaning of common law, either in the past or presently. I did not find this evidence compelling in terms defining the true nature of the relationship, but I accept that filing separate tax returns is consistent with how the parties managed their finances during the relationship.
- [27] After first moving in together in 2008, the parties moved together to a different apartment in 2010, and then again to another location in 2011. They no longer had roommates but continued to share expenses as they always had. This manner of managing the financial side of their partnership seemed to work for them at the time. The evidence was that Ms. Skinner was independent and very committed to carrying her own weight financially, and Mr. Naraine preferred to hold his financial cards close to his chest.
- [28] In 2014, the parties again moved to a rental accommodation in Coquitlam and lived there together as a couple. In December of 2015, through discussions with Mr. Naraine, the landlord of the Coquitlam rental property offered to sell the unit to his tenants.

- [29] According to Mr. Naraine, he initially wanted to purchase the parties' rental property on his own, but his bank advised that he had too much debt and he could not obtain financing by himself. Ms. Skinner may or may not have been aware of Mr. Naraine's internal intentions or inquiries with his bank about purchasing the property on his own. Her recollection was that they met with the bank together for the first time, and that this was when Mr. Naraine was told he needed a secondary applicant.
- [30] Regardless, Ms. Skinner agreed that she initially did not want to purchase the property with Mr. Naraine. Ms. Skinner was wary of incurring so much debt and she was also concerned about the disparity between the parties' incomes. She knew that she could not afford to split the mortgage payments 50/50, as well as all other living expenses with Mr. Naraine. Mr. Naraine confirmed that Ms. Skinner was always very concerned about paying her fair share and was very financially independent. However, when they did the math and she maintained that she could only afford so much, he said, "No problem, I will cover the rest."
- [31] As part of their discussions regarding the purchase, and by way of convincing Ms. Skinner to purchase the property with him, Mr. Naraine assured Ms. Skinner that he understood that he made more money, so she would not have to take on more than she could afford. They came to an agreement that she would pay \$750 per month, which represented half the mortgage payment. Mr. Naraine would pay all other property-related expenses.
- [32] Both parties' parents contributed \$5,000 to the down payment, which was ultimately paid back. Mr. Naraine also put in \$5,000 from his own funds. Mr. Naraine said that while Ms. Skinner was initially reluctant, she eventually was excited to be a homeowner with him and participated in retaining a notary and getting all the documents signed. Ms. Skinner agreed that while she still had concerns, once they made the decision to purchase the property together, she got on board and was fully involved in the process.
- [33] In his testimony, Mr. Naraine characterized Ms. Skinner's \$750 payment as her "rent", even though the parties purchased the property together as joint tenants. Mr. Naraine said he did not recall having any discussions about the specific type of ownership of real property with the bank or the notary or otherwise, and at the time he did not know the difference between joint tenants or tenants in common. However, Mr. Naraine also testified that, when Ms. Skinner continued to express her concern about taking on the mortgage debt, part of his sales pitch to Ms. Skinner was that this was what adults do, they move on in life and purchase property together as a couple.
- [34] Unfortunately, shortly after the parties purchased the property, their relationship started to founder.

- [35] Mr. Naraine recalled that, "out of the blue" Ms. Skinner said she felt financially stressed and wanted out of the property ownership and the relationship. He said that at the time, he thought everything was fine between them. Ms. Skinner said that it was not out of the blue at all, and that contrary to his promises not to hold the greater financial contribution over her, he did so in the weeks and months following the purchase.
- [36] Ultimately, while increased financial strain due to the property purchase may have contributed to the demise of the relationship, it was clear from the evidence that the parties had many problems - some longstanding - that culminated in the breakdown of the relationship. The parties formally separated in April of 2017.

Circumstances of the Agreement

- [37] The parties do not agree on certain aspects of how the Agreement came to be or whether the process leading up to it was fair.
- [38] The Agreement was signed by the parties in August of 2017 and contained the following key provisions:

3.1 Each of the Parties waives any and all of their respective rights to any support or maintenance ... [and] neither of them will bring any action against the other for maintenance or support ...

...

4.1 The Property was purchased by the Parties on or around January 28, 2016 for a purchase price of \$270,000.00 and is subject to a mortgage with the Royal Bank of Canada ...

4.2 The current fair market value of the Property is \$304,000.00, an increase of \$34,000.00.

4.3 The Parties have agreed that the Mortgage will be discharged, Michael will pay to Erica the amount of \$19,908.00 (the "Funds"), and the title to the Property will be transferred to Michael.

4.4 The Funds will be paid to Erica as follows upon the signing of this Agreement, and the transfer of title to the Property to Michael ...

- [39] The Agreement went on to describe vehicles, furniture, household items, and other separate property not subject to division, and outlines how each party is responsible for their own debts. The Agreement also contains a "complete and final agreement clause".
- [40] Mr. Naraine received assistance and advice from a lawyer with respect to drafting the Agreement. Ms. Skinner did not retain counsel or seek legal advice. Mr. Naraine emailed Ms. Skinner with a copy of the draft at one point and said, "Take your time reading it and understanding its content." He passed on some guidance from his lawyer with respect to obtaining a witness for Ms. Skinner's signature, and Ms. Skinner requested minor revisions pertaining to the description of assets, such as vehicles, that were not subject to division in the Agreement.

- [41] While Mr. Naraine's email stated Ms. Skinner should take her time, her evidence was that Mr. Naraine was putting significant pressure on her by emailing her at work about the Agreement, and making her take him off as cosigner of her vehicle on a tight and economically difficult timeline.
- [42] Significantly, Mr. Naraine also urged Ms. Skinner in an email to "get [the Agreement] signed ASAP [] so your payout comes by month end as anticipated."
- [43] In the Agreement, there is acknowledgment by Ms. Skinner at 11.3 of the terms that Mr. Naraine's counsel acted solely for him and that she either sought independent legal advice or waived her opportunity to do so. There is neither a confirmation of independent legal advice nor a solicitor's certificate of independent legal advice appended to the Agreement. There is nothing in the evidence showing that Mr. Naraine's former counsel made efforts made to communicate directly with Ms. Skinner about obtaining independent legal advice. Nor was Ms. Skinner advised that any advice or information that she may have received through Mr. Naraine regarding the legal effect of the Agreement was not provided for her benefit, or with her interests in mind.
- [44] Ms. Skinner said that she did not have the financial means to hire counsel and that, further, she simply did not have the time or ability to retain counsel in the time that was allowed.
- [45] The evidence established that there was little in the way of formal financial disclosure or discussion between the parties about the particulars of their joint or individual finances or the values of their assets prior to entering the Agreement. Significantly, there are no attached supporting documents with respect to the valuation of the property, the mortgage, or descriptions of the parties' bank accounts, pensions, investments, or other. Mr. Naraine confirmed that he and Ms Skinner "did not put all their financial information on the table at the time." He further said he was not hiding anything, that Ms. Skinner knew where his documents were and what accounts he had, but that she did not ask for details.
- [46] Ms. Skinner submits that because she was just starting a new job at the time of separation, she was only able to provide an estimate of what her yearly income would be, which is stated as \$43,000 in the Agreement.
- [47] Mr. Naraine's income is stated in the Agreement to be \$67,000. Ms. Skinner points out that this number appears to be based on his 2016 income tax return, which reports an income of \$68,000. She points out also that in 2017 and 2018, Mr. Naraine actually earned over \$84,000 and \$96,000 respectively.
- [48] Mr. Naraine carefully and repeatedly pointed out that Ms. Skinner's income was, to his knowledge, tax-free income as it was earned in relation to her work as an Aboriginal support worker, and therefore her income should be considered to be the same or more than his. In his submissions, he stated that, "In reality, her actual income was double." No evidence was provided to support this contention at trial. In any event, it is clear that the parties did not do much more than guess at their respective incomes when it came to drafting the

Agreement.

- [49] Other key aspects of the agreement also appeared to be without a solid basis. While the Agreement contemplates that "the funds" (meaning the \$19,908) would be paid to Ms. Skinner upon the signing of the Agreement, it appears that Mr. Naraine's ability to fulfil this portion of the Agreement had not been adequately planned. The Agreement vaguely states that the mortgage will be discharged and the title transferred, and the funds paid to Ms. Skinner. It does not state how or when this will happen in the absence of the sale of the property, a loan, or financing obtained by one or both parties.
- [50] As it happened, Mr. Naraine was unable to come up with the \$19,908 payment to Ms. Skinner as required by the Agreement. Mr. Naraine stated that he went to the bank in August to obtain a loan to pay Ms. Skinner out, but he was stretched to the limit and was told to maybe come back in six months. At some point, approximately two weeks after the signing of the Agreement, Ms. Skinner attended a meeting at the bank with Mr. Naraine and discovered that to allow for the payment of the funds, he required her to participate in refinancing the property with him, which she refused to do.
- [51] Instead, in November of 2017, Mr. Naraine began making monthly \$500 payments to Ms. Skinner. Mr. Naraine claims that Ms. Skinner agreed to this payment plan and, in any event, the situation was caused by Ms. Skinner's refusal to help him refinance the property. Ms. Skinner said that she was not willing to agree to Mr. Naraine's refinancing with her assistance because she was not willing to incur more debt for the property that she was not going to be living in.
- [52] Ms. Skinner testified that she had no real choice but to accept Mr. Naraine's payment plan as she needed the money. She said she was also forced to accept the very specific terms under which he was willing to pay, which was via in-person meetings, arranged by text on Mr. Naraine's schedule, which she described as very inconvenient and controlling. Mr. Naraine would not send funds by e-transfer.
- [53] Ms. Skinner said that she was not in a good financial or emotional position at this time, or during the negotiations for the Agreement, such as they were. She described everything being on Mr. Naraine's terms and that she was "stressed out, and tapped out." She said she felt pressured and tired. She initially wanted to sell the property, but Mr. Naraine refused - it simply was not an option he would entertain. At the time, Ms. Skinner said she wanted to be fair, she wanted to be released from the debt, and that she wanted to at least get out what she put into the property.
- [54] Communication between the parties broke down in the spring of 2018 and Mr. Naraine stopped making the monthly payments. In or around this time, Ms. Skinner also entered into treatment for substance use disorder. As of June of 2018, Mr. Naraine still owed Ms. Skinner over \$16,000 pursuant to the terms of the Agreement.

- [55] Mr. Naraine has maintained the mortgage and made all other payments relating to the property since August of 2017, he says for an approximate total of \$244,000. He has sole occupation of the property. He has not paid Ms. Skinner occupational rent. He has not paid Ms. Skinner for her interest in the property pursuant to the terms of the Agreement, or otherwise, since stopping the \$500 payments in 2018.
- [56] Since the parties separated, the property has increased in value by a significant amount.
- [57] Ms. Skinner maintains that Mr. Naraine took advantage of her vulnerability, her ignorance, need, or distress and that she signed the Agreement under duress. She also says that the Agreement is significantly unfair. She argues that it would be particularly unfair to uphold it now after Mr. Naraine has lived in the unit since 2017. If the Agreement is upheld, Ms. Skinner points out that Mr. Naraine will solely benefit from the increase in the value of the condominium, even though he never even fulfilled the terms of the (unfair) Agreement he negotiated.

Law

- [58] The material provisions of s. 93 in the FLA are ss. (3) to (5) which provide as follows:

93(3) On application by a spouse, the Supreme Court may set aside or replace with an order made under this Part all or part of an agreement described in subsection (1) only if satisfied that one or more of the following circumstances existed when the parties entered into the agreement:

- (a) a spouse failed to disclose significant property or debts, or other information relevant to the negotiation of the agreement;
 - (b) a spouse took improper advantage of the other spouse's vulnerability, including the other spouse's ignorance, need or distress;
 - (c) a spouse did not understand the nature or consequences of the agreement;
 - (d) other circumstances that would, under the common law, cause all or part of a contract to be voidable.
- (4) The Supreme Court may decline to act under subsection (3) if, on consideration of all of the evidence, the Supreme Court would not replace the agreement with an order that is substantially different from the terms set out in the agreement.
- (5) Despite subsection (3), the Supreme Court may set aside or replace with an order made under this Part all or part of an agreement if satisfied that none of the circumstances described in that subsection existed when the parties entered into the agreement but that the agreement is significantly unfair on consideration of the following:
- (a) the length of time that has passed since the agreement was made;
 - (b) the intention of the spouses, in making the agreement, to achieve certainty;

(c) the degree to which the spouses relied on the terms of the agreement.

[59] Section 93 contemplates a two-pronged approach for assessing enforceability under which courts consider both formation and substantive fairness of an agreement: see *Hudema v. Moore*, 2021 BCCA 482 at para. 17; and *Spanell v. Spanell*, 2024 BCSC 733 at para. 15.

[60] At the first stage, if any of the factors identified in s. 93(3) existed when the parties entered the agreement, then it was unfairly reached: see *A.K.K. v. A.S.K.*, 2021 BCSC 1602 at para. 50.

[61] The court must assess each of the s. 93(3) considerations holistically. This process was helpfully outlined by Justice Matthews in *Y.L. v. G.L.*, 2020 BCSC 808 at para. 285:

[285] With regard to the s. 93(3) considerations, on review of *Miglin; Rick v. Brandsema*, 2009 SCC 10; *Asselin; Barch; De Medeiros; B.L.S. v. D.J.S.*, 2019 BCSC 846; and *Bradshaw v. Bradshaw*, 2011 BCSC 1103, the following principles emerge:

- a) the court should consider the s. 93(3) considerations holistically, and not in isolation to each other as the combination of certain factors may lead to setting aside the agreement where each of the factors alone would not, or where the presence of a factor in favour of setting aside the agreement may be ameliorated by the absence of another factor;
- b) the fact-specific nature of the inquiry, particularly the relative vulnerabilities of the parties and/or the relative amount of information they have about each other's financial affairs is such that the cases are not necessarily readily comparable;
- c) with regard to failing to disclose significant property, debts or other relevant information:
 - i. failure to disclose financial information or incomplete disclosure impacts the integrity of the bargain made. The extent and nature of the failure determines whether the court will intervene;
 - ii. a party's assertion that he or she did not believe the other party had a claim to the assets and so did not disclose is not an answer if the party has a claim or an arguable claim. Disclosure is mandatory separate from any argument or negotiation around whether there is a legal interest in the property;
 - iii. failing to disclose any value for property cannot be defended on the basis that there is no misrepresentation because no value is given;
 - iv. where an asset's value is uncertain, the party with the duty to make disclosure should disclose the facts that will allow the other party to make a decision as to the value or as to whether further investigation is required;
 - v. if a party waives the right to financial disclosure in making a separation agreement but does so in the context of having been misled about the existence of assets and/or their value, the waiver may not be informed and therefore not determinative, especially if it is paired with a representation that the facts disclosed are true, accurate and complete;

- vi. failure of a party to act in good faith and to act in accordance with an agreement made is not an answer to the other party's failure to disclose financial information;
- vii. failing to disclose includes incomplete financial disclosure such as not providing the values of assets that both parties know to be in existence, not advising of the true income stream of a business, and providing estimates of the values of an RRSP;
- viii. failing to ask for greater financial disclosure does not prevent the party who did not receive it from relying on s. 93(3)(a);
- ix. where the party complaining of non-disclosure has general knowledge of the other party's assets and their value, non-disclosure of the exact value may not result in an agreement being set aside where the non-disclosure is not a deliberate attempt to avoid addressing the division of those assets or to deprive the other party of information he or she should have in making the agreement;
- x. the non-disclosure must be significant and material;
- d) with regard to one spouse taking advantage of the other's vulnerability, including the other's ignorance, need or distress:
 - i. the parties' relative abilities to understand financial matters is relevant to the assessment of whether one party took advantage of the other's vulnerabilities;
 - ii. vulnerability of a less powerful party should not be presumed, there must be evidence to support a finding of vulnerability;
 - iii. whether the party who asserts vulnerability had input into the content of the agreement is relevant to assessing this factor;
 - iv. legal advice may negate vulnerability but does not necessarily do so and the absence of legal advice does not lead to a presumption that a vulnerability has not been exploited;
 - v. the parties' respective bargaining power is relevant to vulnerability and includes whether one of the parties was at an immediate economic disadvantage because the other party controlled the cash or had better access to cash;
 - vi. physical and/or emotional abuse is relevant;
 - vii. the timing of emotional or physical abuse in relation to the time at which the agreement was made is relevant in the sense that if a party is living in active fear and makes the agreement to get away from an abuser, that is different than a situation where there was an incident of abuse a significant length of time prior to when the agreement was made, especially if the parties were living in different locations when the agreement was made;
- e) with regard to whether one of the spouses did not understand the nature or consequences of the agreement:

- i. whether the party received independent legal advice is relevant, but not determinative;
 - ii. persons who do not take advantage of the ability to receive legal advice may not be held to unfair agreements despite their own failures especially where the party seeking to enforce it withheld information or the person is vulnerable;
 - iii. if a party received legal advice but it was affected by incomplete financial disclosure, it may be not fair to hold the party to the agreement;
 - iv. similarly, failure to read an agreement when there was an opportunity to do so will be taken into account in assessing whether failure to understand the agreement is a basis on which to set it aside;
- f) with regard to other circumstances that would, under the common law, cause all or part of a contract to be voidable:
- i. unconscionability can be based on information asymmetry; and
 - ii. unconscionability does not have to result in the same type of power imbalance that would void a commercial contract but can arise out of any circumstances of oppression, pressure or other vulnerabilities.

[62] A court may still decline to set aside an agreement that was unfairly reached if the terms that the court would substitute are not substantially different than those contained in the Agreement: see Y.L. at para. 283.

[63] As stated by Madam Justice Murray in S.B.F. v. D.G.F., 2022 BCSC 2231:

[25] A finding of oppression, pressure, or other vulnerabilities with respect to a property division or spousal support agreement alone is not ... sufficient to set aside the agreement. There must also be evidence that the other party exploited the vulnerable party and, as a result, secured an agreement that deviated substantially from the result that would follow upon an application of the applicable legislation ... A court can decline to set aside an agreement if, having regard to all the evidence, it would not replace the agreement with an order that substantially differs from its terms: ss. 93(4) and 164(4). A court can decline to set aside an agreement if, having regard to all the evidence, it would not replace the agreement with an order that substantially differs from its terms: H.J.S. v. K.C.S., 2013 BCSC 998, at paras. 39 and 44-46.

[64] Assuming that the agreement reaches the second stage of the analysis, s. 93(5) requires the court to consider whether the agreement is significantly unfair. including consideration of the three factors listed in s. 93(5)(a) - (c). Those factors are:

- a) the length of time that has passed since the agreement was made;
- b) the intention of the spouses, in making the agreement, to achieve certainty; and
- c) the degree to which the spouses relied on the terms of the agreement.

- [65] In some circumstances, the factors listed in s. 93(5) will affect the fairness of the agreement, but more often they will affect whether or not a significantly unfair agreement should be left in place or set aside: see *Azanchi v. Mobrhan-Shafiee*, 2021 BCCA 55 at para. 52.
- [66] While certainty is a desirable objective, it should not trump either procedural or operational fairness as defined in s. 93: see *Asselin* at paras. 130-131. As further explained in *Y.L.* at para. 284:
- [284] A touchstone in the analysis is whether the legislative objectives of the Family Law Act, namely, to encourage resolution of family law disputes through agreements (s. 4(b)) and the certainty, predictability and clarity created by the simplified equal division regime (*Jaszczewska* at para. 36), are met. The analysis must also respect contractual autonomy while recognizing the unique nature of negotiating agreements for the dissolution of spousal relationship and the inherent vulnerabilities in play as they relate the concept of unconscionability: *Miglin* at paras. 66, 82.
- [67] To this I will add the following commentary by Justice Morley from *He v. Fan*, 2025 BCSC 1517 at paras. 118-120:
- [118] Shortly after Justice Matthews' decision, the Supreme Court of Canada released *Uber Technologies Inc. v. Heller*, 2020 SCC 16 [Uber], which, in my view, reformulated the doctrine of unconscionability in important ways. In my view, the general principles of "commercial" unconscionability now correspond to those that must be present for the operation of s. 93(3)(d) of the FLA, although since those principles are themselves contextual, they may apply differently.
- [119] As a result of Uber, some of the historic barriers to the application of the doctrine of unconscionability have been removed. There are now two elements of unconscionability:
- a) there must be an "inequality of bargaining power" to the detriment of the party seeking to set aside the contract, and
 - b) the bargain must be "improvident" from the perspective of that party.
- [120] I will discuss what each of these tests mean at greater length when I analyze the specific agreements in this case. For present purposes, it is sufficient to note that Uber has radically changed the law of unconscionability. So while I agree with Justice Matthews that unconscionability may be available in family-law cases where it would not be in a commercial contract, because of the very different contexts, at the level of principle, there is a convergence. Freedom of contract is an important principle in both spheres, but in neither is it absolute. It can be defeated if there are both significant process objections to how the contract came about and significant substantive inequalities in the result.

[Emphasis added]

Credibility

- [68] Before I get into my analysis of what I consider the primary questions at issue, I will say a few words about credibility and reliability. The leading case in terms of assessing credibility and reliability is *Bradshaw v. Stenner*, 2010 BCSC 1398 aff'd 2012 BCCA 296. This is well-settled law.
- [69] In general terms, credibility "involves an assessment of the trustworthiness of a witness's testimony based on the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides." *Bradshaw v. Stenner*, at paras. 186-187.
- [70] When addressing credibility, this Court also frequently cites the guidance in *Faryna v. Chorny*, 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354 at 357, where the court stated "the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions."
- [71] Reliability is a distinct but related concept. Rather than focusing on a witness' honesty or truthfulness, reliability is concerned with the accuracy of the witness' testimony for reasons other than honesty, such as faulty powers of observation, recall or narrative skills: *Ford v. Lin*, 2022 BCCA 179 at para. 104; *Equustek Solutions Inc. v. Jack*, 2020 BCSC 793 at para. 109.
- [72] To assess credibility and reliability, the court must consider factors such as the witness' ability to observe events, the firmness of their memory, their objectivity, any inconsistencies between pre-trial evidence and testimony at trial or between direct and cross-examination or with other independent evidence accepted at trial, the plausibility of the testimony and the witness' demeanour generally: *Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd.*, 2019 BCSC 739 at paras. 90-92, aff'd 2020 BCCA 130.
- [73] On balance, I find that both parties demonstrated issues with reliability. Ms. Skinner tended to be argumentative and oppositional, but this was often in response to questioning pertaining to whether the parties were roommates or in business relationship, which I understand was both insulting and frustrating for her. For his part, Mr. Naraine tended to be vague and skirted over details and facts not favourable to his interpretation of events. He appeared to rely on his own assumptions about what Ms. Skinner felt, or knew, or believed about the relationship without much basis for doing so beyond his own point of view.
- [74] However, I also did not find that either party was wilfully or intentionally dishonest when they testified. Mr. Naraine frankly admitted that he and Ms. Skinner were a couple, despite the pleadings and initial position he took in this litigation. On the key facts before me, there was not much difference between the testimony and evidence of the parties in terms of the circumstances of the Agreement or the events that followed. Their individual interpretation of the motivations and understandings of the other regarding the events in question certainly differ but, as was starkly apparent during their testimony, the parties are very different people with very different communication styles.

- [75] Ultimately, I do not find that this case rests on credibility. I have taken the testimony and evidence of both parties into account and there were occasions when I preferred the evidence of Ms. Skinner over that of Mr. Naraine, and vice versa, but not in such a way that it had a significant impact on my analysis of the Agreement under s. 93 of the FLA.
- [76] When it comes to considering the formation of the Agreement and whether the Agreement was fair, signed under duress, or repudiated, the differences in how the parties described events prior to separation or after the \$500 payments ceased were not particularly relevant in light of the documentary evidence. Many of the key facts were not in dispute as between the parties.

Analysis

- [77] Should the Agreement be set aside? This is the fundamental question before me, and I find that it should be for several reasons:
- [78] First, because whether he intended to or no, Mr. Naraine took advantage of Ms. Skinner's vulnerability and lack of knowledge at the time of entering into the Agreement. He applied pressure, both in terms of timing and by way of offering a quick payment at a time when Ms. Skinner was struggling emotionally and financially, and she needed to find and pay for new accommodation once she moved out of their shared property.
- [79] Second, Mr. Naraine had legal advice, though to what extent he was advised on the terms of the Agreement or the improvidence of basing the Agreement on financial terms he was not certain he could meet is unknown to me. Ms. Skinner was not provided with sufficient time or understanding with respect to seeking independent legal advice. Mr. Naraine did not offer to pay for such advice and neither he nor his counsel impressed upon Ms. Skinner, directly or indirectly, that she could or should do so, nor draw her attention to the risks of not doing so.
- [80] Given the terms of the Agreement and what they meant in terms of property division, I believe what was provided to Ms. Skinner in this respect - a brief suggestion in an email from Mr. Naraine, and then a term referencing waiving legal advice in the Agreement itself, was insufficient under all the circumstances.
- [81] Ms. Skinner did not understand the effect of the Agreement. Mr. Naraine knew that Ms. Skinner was afraid of debt and had been reluctant to commit to purchasing the unit at the outset. I find that he relied on her concerns about getting out from under this debt and obtaining at least her own investment back in order to convince her to agree to the simple split of the equity, as he stated it to be without a proper appraisal nor, as it turned out, any real assurances about how or when those funds would be provided to her.
- [82] I find that the asset's value was uncertain and therefore it was impossible for Ms. Skinner to truly assess the nature of the Agreement she was making.

- [83] While Ms. Skinner technically had the ability to contribute to the Agreement, and she made certain requests regarding the description of assets that were not even being divided, I do not find that she had a meaningful opportunity to contribute to its drafting, and there was no true negotiation with the full disclosure of information.
- [84] While the parties tended to manage their finances separately and with very little in the way of meaningful exchanges of information, I find that this cannot be relied on as a basis for failing to properly appraise the value of and negotiate specifics about the division of their jointly-owned property, which was really their only joint asset of note.
- [85] Inequality of bargaining power can arise out of informational, economic, or emotional inequality. Here there was all three. Ms. Skinner lacked information about the value of the property, she did not have legal advice, she was in need of immediate funds and was afraid of being in debt, and she was in a vulnerable, emotional state, with pressure being applied by Mr. Naraine.
- [86] The Agreement represented an "improvident" deal for Ms. Skinner: first because of the informational inequity, and second, because Mr. Naraine was not even in a position to make the promised payment upon signing, which would certainly have impacted Ms. Skinner's decision-making during the negotiations, such as they were. The payment was really the only benefit of the Agreement to Ms. Skinner, even if it was based on insufficient information about the value of the property. Without it, the Agreement had virtually no value to her whatsoever. As a result, I find that the Agreement was unconscionable. This means that, in any event of the FLA, it can be voidable under the common law.

Repudiation

- [87] As I have found that the Agreement should be set aside pursuant to an analysis under the FLA or the common law, I need not consider whether the Agreement was repudiated by Mr. Naraine when he failed to pay the funds he owed Ms. Skinner upon signing.
- [88] The poor drafting of the Agreement in terms of the actual mechanism of payment, along with the timing of the bank meetings regarding Mr. Naraine's inability to refinance on his own, suggest that, had Mr. Naraine kept paying the funds to Ms. Skinner, I might have been able to consider whether the payment plan was sufficient to fulfil the terms of the Agreement. However, the fact is that the primary financial term of the Agreement was not fulfilled, either at the time of signing nor within a reasonable time thereafter, and not before Ms. Skinner took steps to set aside the Agreement.

Remedy

- [89] With respect to remedy, I must decide whether, on the evidence, I would replace the Agreement with orders representing substantially different terms than what the parties agreed to. This would include a different method of dividing the property and, as claimed by Ms. Skinner, a potential claim for spousal support which the parties specifically waived in the Agreement.
- [90] I have found that the parties were in a marriage-like relationship. I have also found that the way the entire Agreement was arrived at was unfair. However, when I consider the content of the Agreement, much of it is in line with how the parties conducted their relationship in terms of keeping their finances, debts, and small personal assets in particular separate.
- [91] I find that the nature of their relationship was one of independent partners who, while certainly in a romantic and committed relationship together, had not comingled their bank accounts or made significant joint financial commitments together.
- [92] The one significant exception to this rule is, of course, the primary asset of the parties, the one real shared asset between them - which is the property. This financial commitment must be considered separately from the rest of their financial history.
- [93] Mr. Naraine wanted to purchase the property and could not do so without Ms. Skinner's participation. Ms. Skinner was reluctant to purchase it as she did not view home ownership through the same lens as Mr. Naraine, and she was concerned about the financial disparity between herself and Mr. Naraine.
- [94] Mr. Naraine convinced Ms. Skinner to purchase the property with him both by suggesting it was a step along the adult track they were travelling together as fiancées, and by giving assurances that the property purchase would be treated differently than the rest of their financial relationship. They came to an agreement that facilitated both of their needs, and they made that financial commitment together on that basis.
- [95] In lieu of spousal support, Ms. Skinner is claiming an unequal division in her favour of the property, in part to reflect the economic disadvantages she suffered as a result of the breakdown of the relationship between herself and Mr. Naraine, citing s. 95 and 161 of the FLA.
- [96] I am not convinced that, absent the dispute over the property, Ms. Skinner would have claimed spousal support or division of Mr. Naraine's pension. In fact, I am not convinced there would have been an agreement of any kind upon the breakup, if the parties had not made one large joint purchase together which represented a marked departure from how they managed their finances leading up to that point.
- [97] As such, aside from the division of property, I am not convinced that I would have made significantly different orders than the terms that currently exist in the Agreement with respect to spousal support, given the manner in which the parties existed in their

cohabitation arrangements up until the purchase of the property. I acknowledge that this may have changed over time, if the parties had gotten married as planned and had continued as a committed couple long after the purchase of the property. However, those are not the facts before me.

- [98] It is my view that the economic disadvantage suffered by Ms. Skinner as a result of the breakdown of the relationship can be focused with some precision on the Agreement pertaining to the property, which was unfair to begin with, compounded by the fact that Mr. Naraine failed to uphold the primary financial term of that Agreement.
- [99] Mr. Naraine claims that some equalization is required to reflect his maintenance of the property and the mortgage since the parties separated. Of course, this must be measured and balanced against the benefit he derived from being the sole occupant of the property, which could also earn rent from letting out one of the rooms. This, while Ms. Skinner was forced to pay to live elsewhere, and when she was deprived of even the small amount she was promised under the Agreement.
- [100] On that point, when considering the appropriate property division, I must consider Mr. Naraine's clear failure to live up to the terms of the very Agreement he now wishes to enforce, eight years later.
- [101] The Agreement was of course premised on, and was considered necessary by Mr. Naraine as a result of the breakdown of the committed marriage-like relationship between himself and Ms. Skinner. This litigation was likely prolonged and a reasonable financial resolution between the parties delayed because there was a contradictory and ultimately unsupportable position taken by Mr. Naraine that the parties were not in a marriage-like relationship.
- [102] Given the rough estimates provided by the parties and certain issues regarding late or incomplete financial disclosure, my orders will be necessarily broad to achieve some form of rough justice between the parties. This will not be a precise mathematical exercise.
- [103] For the purposes of the below, I will rely on the property appraisal amount in evidence of \$602,000 and the notional equity in the property at the time of trial as being approximately \$398,000.

Orders

[104] I make the following declarations and orders:

- a) The August 2017 separation agreement between Erica Skinner and Michael Naraine is set aside.
- b) The property at 301, 99 Begin Street, Coquitlam, will be listed for sale.

- c) The parties will have joint conduct of sale with liberty to apply to the court for direction should one or more parties consider the other is not facilitating the efficient showing of the property, the reasonable consideration if there are offers, and the sale of the property within a reasonable time period.
 - d) Upon the sale of the property, the proceeds will be distributed as follows:
 - i. First, to discharge the RBC mortgage and any legal or other fees related to the sale of the property.
 - ii. Once the mortgage is paid out, the proceeds of the sale will be divided as follows:
 - \$5,000 will be returned to Mr. Naraine, in relation to his down payment.
 - 55% of the remaining equity will be paid to Ms. Skinner
 - 45% will be paid to Mr. Naraine.
 - From Ms. Skinner's proceeds will be deducted the amount required to resolve or pay out any remaining judgment registered against the property as a result of Ms. Skinner's debt to the Bank of Nova Scotia.
 - e) As an alternative, Mr. Naraine may, within 14 days of the date of this order, advise Ms. Skinner that he has secured financing or is able, by other means, to provide a cash payment to her in lieu of selling the property. The cash payment will be the equivalent of 55% of the equity in the property as at the date of the trial, less the \$5,000 for Mr. Naraine's down payment, and less the amount required to discharge the judgment registered against title associated with Ms. Skinner's debt. Any such cash payout will be made no more than 30 days after the date of the order or by agreement of the parties.
 - f) Mr. Naraine must provide proof of financing or ability to make the cash payout, along with his notice, or the property will be immediately listed for sale.
 - g) The parties will remain responsible for all unsecured and other debt remaining in their sole names.
 - h) The parties will retain all other personal property or assets in their possession or as already divided or disposed of by the parties in the summer of 2017.
 - i) The parties will retain their own pensions, savings accounts, and investments, and
 - j) all other claims are dismissed.
- [105] Ms. Skinner is, by and large, the successful party on this litigation and I award her costs of the proceedings at Scale B. I understand that her counsel has asked to make further submissions on costs on notice, 30 days after the date of this order.

[106] As explained, when I considered how to address the division and balancing of the costs and contributions of the parties, I took into account the period of time Ms. Skinner was deprived of what she was owed, which was, at least in part, due to certain positions taken in the litigation.

[107] I will allow the parties to make further submissions on costs within 30 days, should they deem it necessary, or if certain facts or evidence specifically pertaining to costs were not addressed during the trial, such as offers to settle. I do so in the hope that counsel will carefully consider whether expending further legal costs to argue for a change in the costs order is likely to result in a net benefit to the parties.

"J. Whately J."

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Prepared on 24 October 2026 · Esheria