

CANADA / JUDGMENT

Stone v. Stone

2025 BCSC 2321

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 2321 Stone v. Stone

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Stone v. Stone,

2025 BCSC 2321

Date: 20251126

Docket: S39548

Registry: Chilliwack

Between:

Dianne Stone also known as Dianne Gayl Johnson

Plaintiff

And

Kenneth Stone

Defendant

And

Dianne Stone

Defendant by Counterclaim

Corrected Judgment: The text of the judgment was corrected on the front page on December 5, 2025.

Before: The Honourable Justice Walkem

Reasons for Judgment

In Chambers - Summary Trial

Counsel for the Plaintiff:

D.A. Sorensen

N. Buttler-Speers, Articled Student

The Defendant, appearing in person:

K. Stone

Place and Dates of Trial:

Chilliwack, B.C.

January 28-29, 2025

May 14-15, 2025

Place and Date of Judgment:

Chilliwack, B.C.

November 26, 2025

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I. INTRODUCTION

- [1] This civil claim reflects disagreements that can arise between siblings flowing from the care for aging parents, intertwined with disputes about distribution of their parents' estates. Disputes such as this will likely become more common in the upcoming years as our society ages.
- [2] The plaintiff is Dianne Stone, also known as Dianne Johnson ("Dianne"), and the defendant is Kenneth Stone ("Ken"). They are siblings. For ease of reference, I will refer to the parties and some family members by their first names. No disrespect is intended from this approach.
- [3] Dianne is the registered owner of a property at 5121 Extrom Road, Chilliwack, B.C. (the "Property"). There is a mobile home situated on the Property (the "Mobile Home") that was owned by the parties' mother, Ivy Stone ("Ivy"). In 2012, Ken moved into the Mobile Home to care for Ivy as she aged. Ivy passed away in 2017 and left the Mobile Home to Ken in her will.
- [4] Dianne would like Ken and the Mobile Home off the Property. Ken would like to remain, or be compensated for the Mobile Home and improvements made to site it. Additionally, Ken made a \$50,000 loan to Dianne and both parties seek clarity of the loan terms. The parties have other siblings who are not parties to the litigation but who provided affidavits.
- [5] Ken was self-represented. I am mindful of this Court's duty to self-represented litigants, which were highlighted by the Court of Appeal in *Rahman v. Windermere Valley Property Management Ltd.*, 2022 BCCA 258 at paras. 31-34. The Canadian Judicial Council issued the Statement of Principles on Self-Represented Litigants and Accused Persons (2006) which provides guidance to ensure that matters are decided on their merits and not on a self-represented party's lack of understanding of legal rules or process.
- [6] Some arguments put forward by Ken were unclear or difficult to follow. The arguments and the evidence ranged in relevance and helpfulness. However, from an overall review of pleadings and arguments, the issues before me include:
- a) whether Ken can continue to live in the Mobile Home situated on the Property;
 - b) what, if any, remedies are owed to Dianne; and
 - c) the terms of the \$50,000 loan made by Ken to Dianne.

II. PRELIMINARY ISSUES

Hybrid Summary Trial Process

- [7] Dianne applied for a summary trial under R. 9-7 of the Supreme Court Civil Rules, B.C. Reg. 168/2009. Ken argued that this matter is not suitable for summary trial because there were credibility issues between the parties which could not be resolved without an in-person trial.
- [8] Given the monetary amount in dispute between the parties, and the prospective costs of proceeding to a full viva voce trial, I ordered that this matter proceed by way of hybrid summary trial. Each party was permitted to cross-examine the other party on their personal affidavits. I found that this approach allowed for a testing of the credibility of the parties and maintained the proportionality of a summary trial based on the evidentiary record filed by the parties.

Credibility

- [9] This case turns on the parties' different views of the terms of agreements made between Dianne and Ivy, and between Dianne and Ken. The agreements between the family members were unwritten, and seemed to shift over time, reflecting the evolving nature of family relationships and dynamics.
- [10] Dianne and Ken each offered different interpretations. Ivy passed away before this dispute arose so no evidence from her was possible.
- [11] Credibility assessments evaluate 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": *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, *aff'd* 2012 BCCA 296. In *Bradshaw* at para. 186, Justice Dillon summarized the factors to be considered when assessing credibility as follows:
- a) a witness' ability and opportunity to observe events;
 - b) whether the witness' evidence harmonizes with independent evidence that has been accepted;
 - c) whether the witness' testimony seems unreasonable, impossible, or unlikely; and
 - d) whether a witness has a motive to lie.
- [12] In *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at p. 357, 1951 CanLII 252 (B.C.C.A.), our Court of Appeal noted that: "the real test of the truth of the story of a witness must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions."

- [13] I apply these principles to my assessment of the evidence presented at trial, as set out below. I found, to a degree, that the evidence of both parties was self-serving and that neither party's evidence was entirely believable. I outline where I have accepted the evidence of either party on different points below.

III. BACKGROUND

- [14] Dianne purchased the Property from Ivy in about 1982. Ken suggests that Dianne did not pay for the Property, which she denies. Ken points to a transfer document which shows that the purchase was for a nominal amount. Dianne says a nominal purchase price was recorded to reduce taxes.
- [15] So far after the fact, I am not convinced that it matters whether or not--or for what amount--Dianne paid Ivy for the Property. The Property is registered in Dianne's name and has been for over forty years. Ivy never took steps to challenge this.
- [16] The differing views on whether the Property was paid for illustrates the family dynamic at the heart of the dispute: disagreement between the siblings about what each was gifted, or entitled to, from Ivy and her estate. This dynamic is further complicated by their disagreement about their roles in caring for Ivy and for each other.

Agreement

- [17] Around 2003, there was discussion among Ivy and some of her children about Ivy purchasing a mobile home and situating it on the Property. The parties agree that Ken was not involved in these discussions. There is some indication that Ivy's other children did not agree with this arrangement because they worried it was a bad investment, and that Ivy would lose capital under the arrangement, though that is not material to the dispute before me.
- [18] Dianne and Ivy eventually entered into an arrangement to accommodate this setup. Dianne claims that the terms of their agreement were as follows:
- a) Dianne would allow Ivy to install and live in the Mobile Home on the Property;
 - b) Dianne would maintain the Mobile Home and the land within reasonable proximity to the Mobile Home for Ivy;
 - c) Ivy would pay all expenses related to the site preparation and installation of the Mobile Home on the Property; and
 - d) Ivy would not pay rent to Dianne while residing in the mobile home on the Property.
- [19] Dianne alleges that the goal of this arrangement was to allow her to care for Ivy and also to provide Ivy with some independence as she aged.

[20] After Ivy initially purchased the Mobile Home, one of her other sons had the purchase cancelled. Ivy, accompanied by Dianne, then returned to the dealership and repurchased the Mobile Home, a 2000 Dartmouth 14347 with serial number 0319335, and manufactured home registry number 086020, for \$52,500 in March 2003.

Mobile Home and Other Works on the Property

[21] Ivy paid for preparation of the site and installation of utilities to site the Mobile Home on the Property.

[22] Ken's pleadings describe the work and costs necessary to situate the Mobile Home on the Property as follows:

In preparation for and to make it legal and possible to move the Mobile Home onto the Property, [Ivy] spent considerable money and made many improvements to the Property. These include but are not limited to the following: clearing trees to make room for the Mobile Home, construction of a new driveway for the Mobile Home; construction of the pad for the Mobile Home; installation of a septic system for the Mobile Home; connection of water for the Mobile Home; connection of phone service for the Mobile Home; permitting and connection of power to the Mobile Home. Once the Mobile Home was placed on the Property, [Ivy] spent significant funds building a 56' x 12' deck off the side of the Mobile Home. She also built a 16' x 10' sun room attached to the Mobile Home. Ivy also landscaped the area around the Mobile Home and these additional Improvements.

[23] In his application response, Ken suggests that the installation costs were approximately:

- a) \$25,000 for various improvements;
- b) \$8,000 for a sunroom and large deck; and
- c) \$47,500 for various landscaping work (much of which was done by a brother of the parties).

[24] At best, these amounts are rough estimates so far after the fact.

[25] Dianne does not dispute that this work was done at Ivy's expense. Dianne points out the amounts put forward by Ken in many cases are estimates and Ken has provided no receipts. Dianne argues that the value of any work done to site the Mobile Home has diminished over time, and that she should not be required to reimburse Ivy's estate for these works.

[26] The Mobile Home has a Temporary Accessory Dwelling permit. Ivy, and then Ken, paid taxes pursuant to that permit to the City of Chilliwack.

[27] Ivy moved into the Mobile Home in 2003. In 2011, when Ivy's health started to deteriorate, Ken moved into the Mobile Home to care for her. This arrangement lasted until 2016, when Ivy's deteriorating health required her to move into a care home.

[28] Around 2011, Ken moved a C Can shipping container trailer (the "Trailer") onto the Property, which he describes as follows:

a 40' steel shipping container, Although theoretically movable, the Trailer was damaged when it was delivered and would therefore be very difficult and expensive to move. The Trailer has power connected to it and functions as an all-weather out-building [I] painted the trailer green at the request of [Dianne].

- [29] Ken uses the Trailer as a shop. Dianne's testimony was that she agreed that the Trailer could be situated on the Property, but that she had felt pressured by the defendant. The value of the Trailer is unclear, especially given that it was damaged during installation.
- [30] At some point after the Mobile Home was purchased and installed on the Property, there was a discussion involving other siblings that the Property should be subdivided and a separate title created for the area where the Mobile Home was situated. Dianne never agreed to this. No separate title was ever created for the Mobile Home site.
- [31] Dianne's testimony--which I accept--was that creation of a separate title for the Mobile Home site was not a condition of the agreement that she made with Ivy.
- [32] Ivy passed away in July 2017. Ken was the sole executor and trustee of her will. The entire residue of Ivy's estate, including the Mobile Home, was given to Ken. The Mobile Home was transferred to Ken's name around July 2018. Ken declared the Mobile Home to be worth \$12,000 when its title was transferred to him.
- [33] Ken says that he cared for and maintained the Mobile Home and paid taxes and utilities over the years.

Loan Agreement

- [34] In either December 2009 or January 2010, Ken says that he loaned \$50,000 to Dianne. I note that though both parties now agree that the loan was made, their evidence sometimes listed 2008 as the loan date. Dianne originally appeared to deny that the loan was made, or the circumstances surrounding it. The loan agreement was not set out in writing. The parties agree that Ken loaned Dianne \$50,000, but disagree on the terms of the loan, if any.
- [35] Ken says that shortly after the loan was made, he began living in the basement suite of Dianne's house.
- [36] According to Dianne, the loan was interest free and she agreed to pay it back when the Property was sold or at another undefined time. Ken argues that the interest-free loan was made pursuant to an agreement that he could live on the Property, rent free, until the loan was repaid. Ken also says that he offered Dianne the option to transfer a proportional share of the Property to his name to fulfill the outstanding loan, but she declined.

- [37] While living in the basement suite of Dianne's home, Ken paid half of the home's utilities. Ken also did work to maintain or improve Dianne's home including repairs to the sump pump and replacing pipes and soffits. Ken does not seek reimbursement for the work he did. He does, however, want acknowledgment that he contributed to, and was supportive of, Dianne over the years.
- [38] In or around 2011, Ken moved into the Mobile Home with Ivy as she required more care.

IV. PARTIES' POSITIONS

- [39] Dianne seeks to have Ken vacate the Property and remove the Mobile Home and Trailer. Ken would like to remain in the Mobile Home on the Property. If Ken cannot remain in the Mobile Home on the Property, he argues that Dianne should reimburse him for the value of the Mobile Home, Trailer, and improvements that Ivy made to situate the Mobile Home on the Property.
- [40] The Mobile Home is in a state of some disrepair. There is a sign on the deck cautioning people that it poses a danger. Landscaping and garden work done while Ivy lived in the Mobile Home have deteriorated significantly.
- [41] In 2024, the Mobile Home and associated improvements were assessed at \$138,000, for purposes of taxation. Ken estimates the Mobile Home's value, if sold and needing to be moved off the Property, to be around \$12,000-\$17,000. The Mobile Home is worth significantly less if it needs to be moved because there is a shortage of available mobile home sites to move the Mobile Home to. There is a possibility that the Trailer cannot be moved and remain intact as it was damaged during installation.
- [42] An estimate to move the Mobile Home to a new site put the cost at approximately \$28,000. On this evidence, it appears that the cost to move the Mobile Home may be more than the Mobile Home itself is worth.
- [43] Dianne says that when she asked Ken to remove the Mobile Home, he responded with personal threats directed at her as well as threats to damage the Property, including to blow up or otherwise damage the septic tank, well, and concrete trailer pad. Ken's testimony was contradictory about whether or not he issued such threats. I accept Dianne's evidence that Ken was unhappy when asked to remove the Mobile Home and Trailer and made threats.
- [44] Dianne wishes to sell the Property. She believes that the Mobile Home, in its state of some disrepair, together with the Trailer, detract from the value of the Property and are a disincentive to prospective purchasers.
- [45] Neither party provided an official appraisal of the value of Property with, and without, the Mobile Home and Trailer. Dianne provided realtor estimates which said that the Property's value decreased with the Mobile Home and Trailer situated on it. Ken adduced evidence from a realtor which suggested that the Mobile Home may increase the value of the Property because it provides a source of rental income. Any potential increase in the value of the

Property due to a rental unit situated on it only materializes if the same person holds title to both the Property and the rental unit (here, the Mobile Home) and is entitled to rent it out as a source of income, which is not the case here.

- [46] The Mobile Home--having depreciated in value and being difficult, if not impossible, to move given financial constraints and lack of available pad space--presents a conundrum. This is a circumstance where value is in the eye of the beholder. For Dianne, the Mobile Home and Trailer diminish the value of the Property. For Ken, the Mobile Home is his home and inheritance from Ivy. The resulting situation is a Catch-22 for the parties, worsened by the family relationships which have been strained to the point of breaking.
- [47] Ken says that he will vacate the Property before Dianne sells it, if she repays the \$50,000 loan and compensates him for the "full and fair value of the Mobile Home, Improvements, and Trailer". Ken testified that if he cannot live in the Mobile Home on the Property that he would prefer to transfer title to Dianne. Ken believes that the Mobile Home and Trailer add value to the Property, and would like to be compensated for their value if the Property is sold including the Mobile Home and Trailer.
- [48] Conversely, Dianne wants the Mobile Home and Trailer removed from the Property and has no interest in having title transferred to her.
- [49] Ken says he cannot afford to move the Mobile Home from the Property and questions whether there is any place it can be moved to, given the shortage of pad spaces for mobile homes.
- [50] Dianne asserts that Ken is committing continuing trespass through his unauthorized occupation of the Property--both of his person and the Mobile Home and Trailer. Dianne seeks various remedies, including a permanent injunction, writ of possession, mesne profits, both general and special damages, and an order that Ken remove the Mobile Home and the Trailer from the Property.
- [51] Ken opposes all relief sought by Dianne. Ken's counterclaim relies on "Law of Contracts", "Law of Property", "Law of Equity", and "Any other appropriate or applicable legal basis not mentioned above". Ken seeks various remedies, including:
- a) an order that the Property be sold along with the Mobile Home and the Trailer because "doing otherwise would destroy the [defendant's] property without proper compensation and would lower the value of the Property for [the plaintiff]";
 - b) an order that will "delineat[e] a fair process by which [the defendant] can be properly compensated for the Mobile Home, the related improvements and the Trailer when the Property is sold"; and
 - c) a lien against the Property for "\$50,000 and the full and fair valuation of the Mobile Home, the Improvements, and the Trailer which can be paid to [the defendant] when the Property sells."

- [52] Ken argues that he inherited a "Constructive Trust" from Ivy which arose when Ivy made improvements to the Property to site the Mobile Home. Ken claims that if Dianne does not compensate him, she will have been unjustly enriched by the site preparation done by Ivy and the value of the Mobile Home and Trailer, respectively.
- [53] Ken argues the Mobile Home and work done to install it are improvements to the Property for which Dianne should compensate him. Ken claims that Ivy's will indicated that she did not want Dianne to receive the benefit of the improvements that Ivy made on the Property. He claims Ivy willed him the Mobile Home as he was her only child who did not own real estate. Ken accuses Dianne of trying to "annex" Ivy's estate--I took this to mean attempting to steal Ivy's estate.
- [54] Ken further argues that there was an express trust created between Ivy and Dianne, which gave rise to a legal interest in the land itself where the Mobile Home is situated.
- [55] Dianne argues that the improvements were made so that Ivy could site and live in the Mobile Home on the Property during her lifetime. Dianne argues that there was never any intention to create an interest in the land itself. Furthermore, Dianne maintains that she does not benefit from the improvements made to site the Mobile Home on the Property.
- [56] Ken filed a counterclaim on his own behalf, not on behalf of Ivy's estate. I first address whether Ken's argument could succeed if properly brought on behalf of Ivy's estate, and, if necessary, will address any deficiencies in pleadings.
- [57] The breakdown of relationship between the parties has meant that they have been unable to explore whether a mutually beneficial agreement could be negotiated. For example, offering the Property for sale with a set separate value for the Mobile Home and Trailer, to see if there was a purchaser interested in buying them all together.

V. ANALYSIS

Mobile Home

- [58] I first turn to Ivy's interest in the Property, if any, and the terms of any agreement between Dianne and Ivy to situate the Mobile Home on the Property which may give rise to a resulting or constructive trust or claim for unjust enrichment in Ken's favour.
- [59] Dianne is the registered owner of the Property. By operation of s. 23(2) of the Land Title Act, R.S.B.C. 1996, c. 250, she is indefeasibly entitled to ownership of land as described in the title. The presumption of indefeasible ownership can be rebutted in three circumstances:
- through the operation of a resulting trust which may be inferred where no value is given for a legal interest;
 - through the operation of an agreement between the parties that is contrary to the registered legal title; or

- c) taking into account the underlying equitable interests between the parties (e.g. considerations that arise in claims for unjust enrichment).

[Sojka v. Sojka, 2023 BCSC 52 at para. 48, aff'd 2023 BCCA 446; Suen v. Suen, 2013 BCCA 3113 at para. 34; Freeland v. Farrell, 2021 BCSC 1318 at para. 36.]

[60] On a consideration of all of the evidence presented, I find on a balance of probabilities that the existence and terms of the agreement between Ivy and Dianne were as set out by Dianne. Namely, I find that:

- a) Dianne allowed Ivy to install and live the Mobile Home on the Property;
- b) Dianne maintained the Mobile Home and the land within reasonable proximity to the Mobile Home for the benefit of Ivy;
- c) Ivy paid all expenses related to the site preparation and installation of the Mobile Home on the Property; and
- d) Ivy did not pay rent to Dianne while residing in the Mobile Home on the Property.

[61] This interpretation is consistent with the evidence of Ivy and Dianne's actions prior to and following the installation of the Mobile Home. Furthermore, the terms of this agreement make sense; it allowed Ivy to continue to live independently as she aged with the safety net of living in proximity to her daughter if she needed help.

[62] Dianne argues that there was no contemplation that Ivy could grant to a beneficiary upon her death the right to live in the Mobile Home that she had enjoyed. There were no terms of the agreement that would allow Ken to assume Ivy's "interest" in the Property: that is, the right to live on the Property in the Mobile Home upon Ivy's death.

[63] Dianne expressly refused to create a separate title for the Mobile Home site despite pressure to do so by some of her siblings. On consideration of the totality of the evidence, I find that the arrangement between Ivy and Dianne did not contemplate the creation of a separate title, or other form of interest in the Property, that would continue beyond Ivy's lifetime.

[64] In siting the Mobile Home on the Property, Dianne agreed to help care for her mother and provide a place for her to live as she aged. Dianne did not agree to de facto subdivide and created a transferable interest in the Property when she agreed to allow her mother to site the Mobile Home there and to live in the Mobile Home rent free.

[65] The agreement only contemplated Ivy living on the Property, which she did for approximately nine years.

[66] On the evidence before me, I find that Ivy and Dianne did not contemplate what would happen in the event of Ivy's death. Ivy could not have willed a right to continue to live on the Property to Ken upon her death because she did not have that right. The agreement giving rise to Ivy's right to live in the Mobile Home on the Property expired upon her death. The agreement between Ivy and Dianne for siting the Mobile Home on the Property did not

create an entitlement for Ken (or anyone else that may have been a beneficiary of Ivy's estate) to occupy the Mobile Home on the Property after Ivy's death.

Unjust Enrichment and Constructive Trust

- [67] Ken claims Dianne was unjustly enriched and accordingly seeks a remedy of constructive trust or an order that Dianne compensate him for the money Ivy spent installing the Mobile Home site, running utilities to the site, and building add-ons to the Mobile Home, as well as the value of the Mobile Home and the Trailer.
- [68] In *Kerr v. Baranow*, 2011 SCC 10 at para. 32, the Supreme Court of Canada stated that the doctrine of unjust enrichment contains three elements:
- (i) whether the defendant has been enriched by the plaintiff;
 - (ii) whether the plaintiff has suffered a corresponding loss; and
 - (iii) whether there is a juristic reason for the benefit and loss in corresponding.
- [69] The first two elements are approached in a "straightforward economic" manner, while moral and policy questions are addressed under the third element: *Kerr* at para. 37.
- [70] The first element, enrichment, requires that the plaintiff show that they "gave something to the defendant which the defendant received and retained"; the benefit must be "tangible" and may be "positive or negative": *Kerr* at para. 38.
- [71] The second element, a corresponding deprivation, requires the plaintiff show that "the enrichment corresponds to a deprivation which the plaintiff has suffered": *Kerr* at para. 39.
- [72] The third element, an absence of juristic reason, requires that the plaintiff show "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": *Kerr* at para. 40. Juristic reasons to deny recovery include the intention to make a gift, a contract, or a disposition of law: *Kerr* at para. 41. This element "provides for due consideration of the autonomy of the parties, including factors such as the legitimate expectations of the parties, the right of the parties to order, their affairs by contract": *Kerr* at para. 41, citing *Peel (Regional Municipality) v. Canada*, [1992] 3 S.C.R. 762, 1992 CanLII 21 at p. 803.
- [73] The third stage of the analysis proceeds in two steps. First, the court asks whether the case falls within an established category of juristic reasons. If not, the court then asks whether there are legitimate expectations of the parties and moral and policy-based reasons that render a particular enrichment unjust.
- [74] I first turn to the question of whether there has been an unjust enrichment. To make out a claim for unjust enrichment, Ken (on behalf of Ivy's estate) must establish these three things:

- a) that Dianne has been enriched by Ivy;
- b) that Ivy (or Ken, as beneficiary of Ivy's estate) has suffered a corresponding deprivation; and
- c) that there is no juristic reason for Dianne's enrichment and Ivy's (or, her estate's) deprivation.

Was there a benefit?

- [75] Ken alleges that Dianne was unjustly enriched because she benefitted from the improvements that Ivy paid for to site the Mobile Home. Ken claims that the siting of the Mobile Home and associated site preparation work, including the installation of a retaining wall, pad, sewer, landscaping, utilities, and access, would all constitute an unjust enrichment if he had to move the Mobile Home and was not compensated for these improvements.
- [76] Dianne disagrees that she benefitted from the work done to prepare the site and situate the Mobile Home. Dianne argues that Ivy benefitted from her investment by having somewhere to live independently as she aged that was also in close to proximity to her daughter.
- [77] On the facts before me, I find that Dianne was minimally enriched by the improvements made to site the Mobile Home. In particular, I find that Dianne benefitted from installation of the Mobile Home pad and retaining wall, and the provision of utility access. I find, on a balance of probabilities, that these works increased--at least to some extent--the value of the Property. The value of any benefit to Dianne is hard to determine, given the lack of an independent assessment of the value of the Property which takes into consideration the improvement to site the Mobile Home, the lack of information regarding the original costs to site the Mobile Home, and the fact that there is no assessment of the subsequent impact of wear and tear on the value of the improvements over time.
- [78] Nonetheless, I find that the site preparation provided some enrichment to the Property, and to Dianne as a result.

Was there a corresponding deprivation?

- [79] A finding of some minimal benefit to Dianne does not automatically lead to the conclusion that Ivy (or Ken, as sole beneficiary of Ivy's estate) suffered a corresponding deprivation.
- [80] Ivy was the one who paid for the improvements. As a result, and as intended by Ivy and Dianne, Ivy was able to live close to her daughter and maintain a degree of independence until she was unable to live independently. After that, Ivy continued to live in the Mobile Home with her son, Ken. This arrangement allowed Ivy to be cared for by her children and to live rent free in her senior years.
- [81] Costs to site the Mobile Home were spent for Ivy's benefit, and she enjoyed those benefits.

[82] On consideration of the evidence before me, I do not find that there was a deprivation of Ivy or her estate. Therefore, I do not find that the second element necessary to find an unjust enrichment--corresponding deprivation --has been made out on the facts of this case.

Was there an absence of juristic reason?

[83] Given my finding of a lack of deprivation, there is no need to go further and consider the absence of a juristic reason. However, I would have found juristic reason, had the analysis gone that far.

[84] This type of case will become increasingly common as people care for their aging parents. There may well be similar circumstances where people make space on their properties to create living arrangements where an aging parent can live with a degree of independence and caring oversight. This could include the siting of a mobile home or a tiny house on an adult child's property, or potentially even creation of an in-home suite.

[85] It would punish the child-caregiver who makes space available to home and care for their aging parent, to then force them to be financially liable to their parent's estate for changes made to their property to accommodate that caring arrangement after their parent passes away. This result would disincentivize home and family-based care initiatives for aging parents. There are strong moral and policy-based reasons for rejecting this approach.

Constructive Trust

[86] I turn now to the question of whether a constructive trust exists. Ivy paid to create a pad space where the Mobile Home could be sited and arranged for power and utilities hook-ups. Ken alleges that a form of constructive trust arose from this work.

[87] Constructive trust is a proprietary remedy for unjust enrichment and may be ordered where a monetary award is inappropriate or insufficient. To justify a constructive trust, the plaintiff must "demonstrate a link or causal connection between his or her contributions and the acquisition, preservation, maintenance or improvement of the disputed property", in which case "a share of the property proportionate to the unjust enrichment can be impressed with a constructive trust in his or her favour": Kerr at para. 50.

[88] I find the facts of this case do not support the imposition of a constructive trust because the plaintiff has not successfully proven an unjust enrichment.

[89] I do not find that Dianne made any statements, or undertook actions, that evidenced an intention to make herself a trustee with respect to any work necessary to site the Mobile Home on the Property. I likewise find that Dianne did not intend to make Ivy a beneficial owner of the Mobile Home pad or immediate surrounding area under a trust arrangement.

VI. THE LOAN AND KEN'S RIGHT TO LIVE ON THE PROPERTY

Law of Trespass

[90] I turn now to the loan and issue of trespass. In particular, I consider whether the loan agreement includes a term that Ken is entitled to live in the Mobile Home on the Property until the loan is repaid. These issues are intertwined because Ken argues that there was an agreement between him and Dianne that he could live rent free on the Property as long as the loan was outstanding.

[91] Trespass is described Allen M. Linden et al, Canadian Tort Law, 12th ed (Toronto: LexisNexis Canada, 2022) as "a violation of the plaintiff's exclusive control over who or what can legally enter onto land in her or his possession": at p. 536. The elements of trespass are as follows:

- a) a direct and physical intrusion onto land that is in the possession of the plaintiff;
- b) the trespassing act need not be intentional, but it must be voluntary; and
- c) the trespass will be actionable without proof of damage.

[See also Willow Beach Developments Ltd. v Silverstone, 2017 BCSC 2562 at para. 26].

[92] Where trespass continues, it constitutes fresh trespass and is actionable as such: Landmark Shawn Oaks Development Ltd. v. Fallis, 2021 BCSC 883 at para. 63. A trespass may continue so long as the personal presence of the wrongdoer remains, including where a person omits to remove something brought on the land and wrongfully left there: Ward v. Cariboo Regional District, 2021 BCSC 1495 at para. 67, citing Peter Ballantyne Cree Nation v. Canada (Attorney General), 2016 SKCA at paras. 136-138 [Ballantyne]; Linden et al. at p. 548.

[93] Consent, both express and implied, operates as a defence to trespass: Lahti v. Chateauvert, 2019 BCSC 1081 at para. 7; Linden et al. at p. 553. Where a person has consented to having an object placed upon their land, and has subsequently withdrawn that consent, the object will constitute trespass if it remains on the land: Ballantyne at para. 142, citing Bartlett v. Corner Brook (City of), 2003 NLCA 10 at para. 37.

[94] Where an object has been placed on someone's land with consent, and that object becomes a fixture, the individual who placed the object on the land cannot be held continually liable for trespass absent a contractual agreement to remove the fixture: Bartlett at paras. 37-38.

[95] In Chemainus Gardens RV Resort Ltd. v. British Columbia (Attorney General), 2021 BCCA 402 at para. 26 [Chemainus Gardens], our Court of Appeal affirmed that, in determining whether an object is a chattel or a fixture, courts must apply the principles articulated in Stack v. T. Eaton Co., 4 O.L.R. 335 at p. 338, 1902 CarswellOnt 399 (Div. Ct.):

- (1) That articles not otherwise attached to the land than by their own weight are not to be considered as part of the land, unless the circumstances are such as shew that they were intended to be part of the land.

- (2) That articles affixed to the land even slightly are to be considered part of the land unless the circumstances are such as to shew that they were intended to continue chattels.
- (3) That the circumstances necessary to be shewn to alter the prima facie character of the articles are circumstances which shew the degree of annexation and object of such annexation, which are patent to all to see.
- (4) That the intention of the person affixing the article to the soil is material only so far as it can be presumed from the degree and object of the annexation.
- (5) That, even in the case of tenants' fixtures put in for the purposes of trade, they form part of the freehold, with the right, however, to the tenant, as between him and his landlord, to bring them back to the state of chattels again by severing them from the soil, and that they pass by a conveyance of the land as part of it, subject to this right of the tenant.
- [96] There are numerous cases in British Columbia where courts have considered whether a mobile home is a fixture or chattel. In some of these cases the court ruled the mobile home was a fixture: *Royal Bank of Canada v. Neilson (Trustee of)*, [1990] 43 B.C.L.R. (2d) 363, 1990 CanLII 1932 (B.C.C.A.). In other cases, the court ruled the mobile home a chattel: *Atlin Air Ltd. v. Milikovic* [1976], 4 W.W.R. 329, 1976 CanLII 1477 (B.C.S.C.) [Atlin Air]; *Burlington Administration Group Ltd. v. Nikkel*, [1979] 17 B.C.L.R. 229, 1979 CanLII 716 (S.C.) [Burlington Administration]; *Toronto-Dominion Bank v. Zaleschuk*, 1996 CanLII 880.
- [97] What the case law emphasizes is that the application of the Stack factors is an extremely fact-specific exercise: *Chemainus Gardens* at para. 30.
- [98] I find the following facts to be relevant to my determination regarding the Mobile Home.
- [99] With respect to the Mobile Home's degree of affixation, it is unclear to me, from the facts, whether or not the Mobile Home was affixed to the land by its own weight. That said, the work required to site the Mobile Home on the Property, to me, weigh in favour of the Mobile Home being a fixture. To site the Mobile Home, Ivy cleared trees, constructed a new driveway to Mobile Home, and added a deck and sunroom.
- [100] Consistent with the analysis of this Court in *Atlin Air* and *Burlington Administration*, I do not find the installation of a septic system or hookups to phone, internet, and utilities to be determinative of whether the Mobile Home is a fixture or chattel. While it may reflect an intention of Dianne and Ivy to make the Mobile Home into a permanent residence, it does not mean that the parties intended the Mobile Home to become part of the land.
- [101] I find Ivy and Dianne's intentions, which I derive from Dianne's evidence, to be the most persuasive fact to my analysis. Ivy and Dianne intended for the Mobile Home to be a permanent dwelling for Ivy. The parties did not discuss what would happen upon Ivy's death. I conclude that the parties intended for the Mobile Home to be moved to the property for use as a mobile home--that is, a separate dwelling for Ivy--and not to improve the value of the Property itself, which indicates it remains a chattel.

- [102] The fact that the Mobile Home was willed to Ken (if not listed specifically, but as part of the discussed residue of her estate) indicates that Dianne and Ivy never intended to let the Mobile Home become a fixture, regardless of its degree of affixation to the Property. I find that the Mobile Home is not a fixture, but a chattel owned by Ken.
- [103] There is no disagreement that Dianne consented to Ivy situating the Mobile Home on the Property, and that Ivy could occupy the Mobile Home on the Property during her lifetime, rent free. I have found that consent did not extend to Ken through Ivy's estate.
- [104] The remaining question is whether, through the terms of the loan agreement between Dianne and Ken, Dianne consented to allow Ken to continue to live in the Mobile Home on the Property rent free as long as the loan was outstanding.

Loan Agreement Between Dianne and Ken

- [105] Both parties ultimately agree that Ken loaned Dianne \$50,000, interest free, in late 2009 or early 2010. The parties disagree about the terms of the loan.
- [106] Dianne argues that the only term of the loan is that she would repay the money owed upon selling the Property or at some other time. She denies the existence of any agreement that Ken could live on the Property until the loan was paid off. In support of this position, Dianne points out that Ken was not living on the Property at the time the loan was made; rather, Ken only moved into the basement suite of Dianne's home in or around mid-2010, moving out and back in again in 2011, and then moving into the Mobile Home to care for Ivy in 2012.
- [107] Ken claims that Dianne's version of the terms of the loan--that he loaned her money with no interest, no repayment schedule, and no prospect of benefitting from the money over time--does not make sense. For example, there was no timeline for when, or even if, Dianne would sell the Property or would otherwise repay the loan.
- [108] Ken argues that the terms of the loan were that he was allowed to live on the Property, rent free, until the loan was repaid.
- [109] There is no dispute that Ken lived in a basement suite in Dianne's home after loaning Dianne the \$50,000 and prior to living in the Mobile Home with Ivy.
- [110] In *Suen*, the Court of Appeal discussed the formation of a contract, specifically in the context of promises or arrangements made between family members:
- [40] A contract is promissory in nature, that is, it is an undertaking by the promisor to do something for the promisee in exchange for something. The exchange of promises is enforceable only if there is an agreement or consensus on the "existence, nature and scope of their [respective] rights and duties" (G.H.L. Fridman, *The Law of Contract in Canada*, 6th ed. (Ontario: Carswell, 2011) at 6).

[41] Professor Fridman discusses the development of the doctrine of consideration, or the concept of a bargain, as an essential feature of the common law of contract at 8:

... what is an essential ingredient of a valid, enforceable, legally acceptable contract, is an agreement that can be called "serious," that is, made with the kind of serious, binding intent that demarcates the casual promise, undeserving of legal recognition, from a promise which should be effective in law and should be obligatory on the future action, as well as the conscience of the promisor.

[43] Communications in the family context are often no more than statements of intent or wishes. For a promise, in that context, to rise to the level of a binding enforceable contract there must be strict proof of the terms of the bargain including: the parties, the property, and the consideration. See *McKenzie v. Walsh* (1920), 1920 CanLII 72 (SCC), 61 S.C.R. 312, and *Ross v. Ross*, 1957 CanLII 132 (ON CA), [1958] O.R. 49, 11 D.L.R. (2d) 561 (O.N.C.A.).

[111] It is difficult to accept that the loan occurred on the terms that Dianne proposes it did. It does not make sense that Ken would have loaned money with no clear idea of when, or how, it would be repaid, and absent any interest. I also find that there was no enforceable agreement between the parties that Ken could live rent-free on the Property until the loan is repaid.

[112] I find it likely that, as the parties' relationship was better at the time that these informal arrangements were made, that the loan and rent-free living arrangement reflected a loving and caring give-and-take relationship between siblings. The parties supported each other in an informal exchange of mutual assistance. Ken loaned Dianne money; Dianne allowed Ken to live rent-free in her home. Practically, the siblings seemed to have reached an informal quid pro quo over time: Dianne did not insist on rent while Ken lived both in her home and then in the Mobile Home on the Property, while Ken agreed to waive interest and to not call the loan due. Each of them cared for Ivy as she needed more care.

[113] The balance in this arrangement shifted after Ivy developed dementia and needed to be moved to a care home in 2016.

[114] On May 28, 2016, Dianne requested that Ken start paying pad rental and utilities of \$300 per month as Ivy was no longer living in the Mobile Home:

I feel that is only fair that I receive \$300.00 dollars per month pad rental starting the beginning of June. You should also be responsible for the utilities now that mom has moved out.

I do appreciate the help you gave me 8 years ago in the form of a interest free loan. That I will repay in full at the time I se[ll] the property. I know we had an agreement and I have done everything possible to keep things the way they were.

My agreement was only with mom for as long as she resided in the trailer. I have not asked for any pad rent from you even though my situation has changed and I am now forced to live elsewhere to make a living and need help to maintain this property by all those who are enjoying it.

You have lived on my property for the past 7 years and feel it is time for all persons living on my land to pay their way.

Average pad rent is \$500.00-\$600.00 per month and I feel \$300.00 per month is fair.

I would like to discuss this further when I return but I am firm on the pad rent issues.

I am sure we can come to terms of a reasonable agreement.

[115] Ken replied:

Sure, sounds O.K.

Of coarse [sic] I planned on paying the utilities.

I never expected anything else.

[116] After this exchange, Ken continued to live in the Mobile Home on the Property and did not pay pad rent. No further action appears to have been taken.

[117] Things have now come to a head in the current action between the siblings.

[118] Dianne claims that she should be paid \$300 per month for pad rental (which she argues is a low amount) for a period of two years, bringing the total value of her claim to \$7,200 ($\$300 \times 24 = \$7,200$). Alternatively, Dianne seeks mesne profits, a form of damages awarded to a landowner because they were wrongfully denied their property: *Initiate School of the Canadian Rocky Mountains Ltd. v. Wolfenden Ventures Ltd.*, 2013 BCSC 257 at para. 41.

[119] I find that their arrangement informally evolved to one whereby Ken and Dianne informally traded rent for interest. This arrangement is not an enforceable agreement. That is, I find no agreement that Ken can continue to live rent-free in the Mobile Home on the Property as long as the \$50,000 loan remains outstanding. Further, as evidenced by this proceeding, this arrangement is no longer workable. The question is how the parties should now disengage from this long-standing arrangement that has since become untenable.

[120] Given that Dianne does not consent to Ken or the Mobile Home or Trailer remaining on the Property, they are in trespass and need to be removed. At the same time, Dianne must repay the \$50,000 loan Ken made to her. I am of the opinion that equity demands a brief period of grace for both parties to remedy the situation, given the overall circumstances between the parties.

[121] Equitable remedies are intended to be flexible. Accordingly, courts have jurisdiction to fashion workable remedies that "respond to various situations in principled and realistic ways": Kerr at para. 71, citing Cadbury Schweppes Inc. v. FBI Foods Ltd., [1999] 1 S.C.R. 142, 1999 CanLII 705 (S.C.C.) at para. 61; Soulos v. Korkontzilas, [1997] 2 S.C.R. 217, 1997 CanLII 346 (S.C.C.) at para. 34.

[122] I order the following:

- a) Dianne will repay the \$50,000 loan within two months of the date of judgment as follows: She will repay \$30,000 to Ken directly and the remaining \$20,000 will be paid to Dianne's legal counsel, in trust, accruing interest to Ken's benefit.
- b) Ken will remove the Mobile Home and Trailer from the Property within four months of the date of judgment. If Ken does not remove the Mobile Home and Trailer by the four-month deadline:
 - i. Dianne may make arrangements to have the Mobile Home and Trailer removed and apply to the court to have the \$20,000 held in trust towards the costs of doing so.
 - ii. After four months, Ken will be liable to pay pad rental of \$500 per month to Dianne for each calendar month, or part of it, that the Mobile Home remains on the Property, until the Mobile Home and Trailer are removed.
 - iii. Ken will advise Dianne's counsel, in writing, of where the Mobile Home and Trailer should be moved to prior to the end of the four-month period. Absent that information, Dianne may arrange to have the Mobile Home and Trailer removed by the method, and to a location, of her choosing, and that could include hiring a demolition or removal service to undertake this process.

[123] During the four-month period, no rent, damages or interest will be awarded or accrue.

"A. Walkem J."

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